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Criminal Law (1959-1967)

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1. John Stevens was indicted in the Hustings Court of the City of Richmond for a murder committed in that City. The indictment was drawn in the form prescribed as sufficient by Section 19-140 of the Code of Virginia to charge murder in the first degree. With the consent of Stevens, his trial was held without a jury. On the trial, Stevens having entered a plea of guilty, no evidence was offered by the Commonwealth. The court accepted and entered Stevens' plea of guilty, convicted him of murder in the first degree and fixed his punishment as confinement in the penitentiary for a term of fifty years. Stevens appealed from the conviction contending that, in the absence of proof by the Commonwealth, he could not be found guilty of an offense greater than murder in the second degree. The Commonwealth contended that Stevens' plea of guilty made the introduction of evidence by the Commonwealth unnecessary, and that the conviction should stand. Which party should prevail? (CRIMINAL LAW) The Commonwealth should prevail. A plea of guilty is a plea of guilty to the highest offense charged. Such a plea when made understandingly is in effect self proving and makes it unnecessary for the Commonwealth to introduce evidence. Since there is nothing to show that the accused was denied permission to introduce evidence of mitigating circumstances his rights have not been violated. See 177 Va. 906.

2. For many years Fred Fingers had acted as Assistant Cashier of Handsome Loan Co., a sole proprietorship owned and operated by Gus Greedy. Finding himself under financial strain because of funds needed to care for his invalid wife and to repair his residence, Fingers quietly withdrew $500 from Company funds with the intention of repaying it at a later date. Time passed without the repayment being made and Fingers, believing his misconduct would not be discovered, continued to wrongfully withdraw funds until, by May 16, 1959, they had totaled $4,450. The shortage was then discovered by Greedy, who being suspicious of Fingers, confronted him with the shortage and extracted from him an admission that he had taken the money. Thereupon, Fingers threw himself at the mercy of Greedy and convinced him that he should be shown leniency. Greedy then told Fingers that some others had learned of the shortage, and that he could not guarantee there would be no prosecution. Greedy added, however, that if Fingers would pay back to the Company $2,000, Fingers could rest assured that Greedy would not testify against him in the event Fingers was prosecuted for his wrong. Relying on this, Fingers obtained $2,000 from his relatives and paid into the Company the $2,000.

What criminal offense, if any, has been committed by Greedy? (CRIMINAL LAW) Greedy is guilty of a misdemeanor. He knew of the commission of a felony and failed to report it. This is the offense of misprision of felony. He also agreed with the perpetrator of the crime not to prosecute or to testify against him in order to recoup at least part of his losses. This is the offense of compounding a felony. These common law offenses are codified by V#18-265.
5. Two indictments were returned against Dandruff in the Circuit Court of Rockingham County, each charging perjury. (a) Indictment No. 1 charged that Dandruff, knowing it to contain statements that were false, filed an affidavit in support of a motion for judgment against Baldy stating:

"Baldy is indebted to me as averred in the motion for judgment in the sum of $5,000, said sum being due and owing to me for money that I won from him at a poker game at the Paradise Club in Rockingham County on June 16, 1959."

(b) Indictment No. 2 charged that in a bankruptcy proceeding in which Vitalis was adjudicated a bankrupt, Dandruff knowingly and falsely testified under oath before the referee in bankruptcy:

"I do not have any money or other assets belonging to Vitalis in my possession;"

whereas in truth and fact Dandruff did have in his possession $3,000 belonging to Vitalis.

With the consent of Dandruff and the Attorney for the Commonwealth, both indictments were tried together. During the trial the Commonwealth introduced evidence proving: (a) that all the statements contained in the affidavit referred to in Indictment No. 1 were made by Dandruff knowing them to be false; and (b) that one week prior to the date of the filing of the petition in bankruptcy Vitalis gave to Dandruff $3,000 with the request that he hold it for him until after he was discharged in bankruptcy, and that this money was in the possession of Dandruff at the time he testified in the bankruptcy proceeding.

At the conclusion of the evidence introduced on behalf of the Commonwealth Dandruff's attorney moved to strike the Commonwealth's evidence on the ground that it was insufficient to prove the offense charged in each indictment. How should the Court rule?

(CRIMINAL LAW) The Court should strike the evidence for the reason given in both cases. In case (a) the false swearing is immaterial for the matter sworn to shows a void contract under Virginia law. So what legal difference does it make whether or not the statement is true or false? See #1548 of Wharton's Criminal Law (12th Ed) As to case (b) the federal courts have exclusive jurisdiction over bankruptcy cases, and likewise sole jurisdiction over perjury committed in such proceedings. See 134 U.S. 372.

6. Weasel was employed as a valet by Sloth, a wealthy banker in Fairfax County. Weasel's duties consisted, for the most part, of laying out Sloth's dinner clothes and maintaining an adequate liquor supply in the wine cellar. He was furnished a room by Sloth over the garage, which was located approximately 50 feet from Sloth's mansion. Weasel was deeply indebted to Ferrett, the local bookmaker. On October 6, 1959, at 10 o'clock p.m., while Sloth was attending an out-of-town house party, Weasel obtained entrance to the mansion by means of his own key, which had been given to him by Sloth, and took a candelabra which he believed to be worth $500 from the storage closet in the basement. He later discovered, much to his chagrin, that it was worth only $30. Weasel was indicted for burglary. The Commonwealth proved the above facts. Weasel's attorney then moved the Court to strike the Commonwealth's evidence. How should the Court rule?

(CRIMINAL LAW) Either of two answers would be proper here. First answer: Weasel is guilty. He did not reside in Sloth's house and hence had no equal right to be there. There was no permission express or implied to enter to steal. Hence all the element of burglary are present as he broke and entered in the nighttime with the intention of committing a felony. See dictum to this effect in 132 Va. 521 and statement on pp. 636-637 of 3 M.J. Hence the evidence would not be stricken.

Second answer: Weasel is not guilty of burglary, but only of petit larceny. He had permission to enter in connection with his duties, and the fact he abused a permission which he had, would not be enough to do away with the permission, anymore than if a roomer were to enter the house of his landlady with the intention of stealing. There is no breaking and entering as those terms are used in burglary if the criminal has permission. See Perkins on Criminal Law, p. 153. Hence the evidence should be stricken.
8. Judd and Renn, after a hot day of farming, proceeded to the cooler recesses of the Red Rooster Tavern, where they both began to drink beer. After several drinks, they began to argue as to which of them had the greater nerve, each claiming boisterously that the other was lacking in spine. Judd became so angry that he exclaimed: "I am going to shoot you!" To this Renn replied: "Go ahead and shoot me if you have so much nerve." Whereupon, Judd went to his car and produced a pistol and pointed it unsteadily at Renn. Renn chided him and repeatedly dared Judd to pull the trigger, whereupon Judd said, "O.K., I will," and he pulled the trigger and shot Renn in the foot. Judd was indicted for malicious assault, and the Commonwealth proved the above facts. At the conclusion of the Commonwealth's evidence, Judd moved the court to strike the Commonwealth's evidence. How should the court rule on this motion?

(CRIMINAL LAW) The motion should be overruled. One cannot consent to a crime as the Commonwealth has an abiding interest in the maintenance of law and order and in the welfare of its citizens. See 185 Va. 1009.

9. Brown, Green, and White operated an automobile theft ring in the City of Roanoke. Each of them, as well as one Buyer, were jointly indicted for grand larceny of a 1960 Buick automobile. The indictment was in proper form, and all four defendants were tried together.

At the trial, the Commonwealth introduced evidence of the following: Brown, Green and White met by pre-arrangement in an abandoned warehouse, and they planned that Brown would steal the automobile, which was in a fenced lot in downtown Roanoke, that Green would be a lookout for passers-by while Brown climbed the fence, and that White would bribe the night watchman at the lot to leave the gate open on the night of the planned theft.

The Commonwealth further introduced evidence that Brown drove the car out of the unlocked gate, while Green kept watch, and that Brown immediately sold the car to Buyer, who knew of the theft, but had not participated in planning or executing it.

At the conclusion of the Commonwealth's case, Green, White and Buyer each moved the court to strike the evidence as to himself, each contending that the Commonwealth had not made out a prima facie case of larceny as to him.

How should the court rule on the motions of (a) Green, (b) White, (c) Buyer?

(CRIMINAL LAW) Each motion should be overruled. Green was a principal in the second degree since he was present and encouraging the theft. White was an accessory before the fact. By statute receiving stolen property is larceny. The whole theft was one continuous transaction.

4. Defendant was indicted for murder in the first degree. Upon his trial on this indictment, evidence was introduced on behalf of the Commonwealth tending to show that the killing was done pursuant to previous threats. Also, evidence was introduced by Defendant tending to show that the deceased attacked him without any provocation and that Defendant shot in the belief that his own life was in danger. Among other instructions requested by each side were the following:

(1) Requested by the Commonwealth:
"The Court instructs the jury that every unlawful homicide in Virginia is presumed to be murder in the second degree."

(2) Requested by Defendant:
"The Court instructs the jury that the accused is entitled to be tried and judged by the facts and circumstances as they reasonably appeared to him."

Should either or both of these instructions have been given?

(CRIMINAL LAW) Both instructions are correct and should be given. Of course other instructions should also be given in order to supplement these instructions. (You will note that these instructions are not finding instructions and that the question states that there were other instructions). The reason they should be given is that they correctly state the law as far as they go. See 185 Va. 224 on p. 2010 of the Criminal Law Cases in these notes and 185 Va. 224 (headnote 15).
5. Shiftless was walking along Main Street when he saw a hundred dollar bill lying on the sidewalk. He picked it up and put it in his own pocket, intending to give it to its owner, when and if found. Several days later Shiftless got a hot tip on a horse race and bet the hundred dollar bill on a horse that didn't come in. The morning after the race, Careless learned that Shiftless had bet a hundred dollar bill and inquiries thus prompted developed the facts above stated. Careless now asks you whether Shiftless may be prosecuted successfully for larceny. How ought you to advise him?

(CRIMINAL LAW) Shiftless is not guilty of larceny. "To constitute a larceny of lost property, the person finding it must know or have the means of knowing the owner, or have reason to believe that the owner may be discovered, and he must intend at the time of finding the property to appropriate it to his own use." "The taking did not amount to a trespass, and so no larceny could have been committed." 14 Gratt. (55 Va.)635. Shiftless was not guilty of embezzlement (which is made larceny by statute V#18.1-109) because the bill had never been entrusted to him for another as required by the embezzlement statute, supra.

4 June 1961.

1. Ace Holder was a very fine poker player. Much to the distress of his family he played all too often and had an overpowering obsession to win. On March 30,1961, Ace and several of his friends were engaged in a game. It was getting late and they decided to bet everything on the last hand. Ace had not been having a particularly good night and he hoped to recoup some of his losses by winning the big one, but as fate would have it, he lost again.

Ace became so enraged at his run of bad luck that he picked up a large wooden cane which lay nearby and brought it down with great force upon the head of the night's big winner, Spade Player. Player was killed instantly.

Ace, when he realized what had happened, ran to his son's home several doors away where he found his 25 year old grandson and his son's gardener working on an antique automobile in the garage. He told them what had happened and asked them to take him to a place in the country where he could hide out until he could formulate plans to get out of the county. They agreed to help him and took him 35 miles out into the county to a hiding place.

Of what offense, if any, are Gardner and Grandson, or either of them, guilty (1) at common law, and (2) in Virginia?

(CRIMINAL LAW) (1) At common law both Gardner and Grandson are guilty of the felony of murder (no degrees of murder at common law) as accessories after the fact in that they have aided Ace Holder to escape or to attempt to escape with knowledge of the facts. A bad hand at poker is not sufficient provocation to reduce murder to manslaughter, and the fact that the battery here was an act malum in se, and one that could easily result in a fractured skull and death, is sufficient to indicate malice aforethought. (2) By V# 18.1-11 and 18.1-12 no one who stands in the relation of husband or wife, parent or child, grandparent or grandchild, or brother or sister by consanguinity or affinity, or servant to the offender can be held liable as an accessory after the fact, and, instead of an accessory after the fact being guilty of the felony, he is only guilty of a statutory misdemeanor. Hence Grandson is not liable at all. Gardner is guilty of a misdemeanor since he was not the offender's servant.
6. Tom Tough and Meredith Meek lived on adjoining farms in Rockbridge County, Va. On the night of July 17, 1961, while Meek was drinking in a Lexington Inn, Tough suddenly burst in the door and accused Meek of allowing his cows to stray onto his property where they ruined his corn crop. Tough violently abused Meek for a few minutes and then struck him in the face with his fist; whereupon, Meek picked up a beer bottle, broke it over the counter and charged Tough with the broken end in his hand shouting, "I'll kill you for that." Tough sought to escape but Meek was between him and the door and when he could do nothing else to avoid the attack, he pulled a gun from his pocket and fired. Meek fell to the floor dead.

Tom Tough is now on trial for the murder of Meredith Meek. Can the defense of self-defense be successfully asserted in his behalf?

(CRIMINAL LAW) Yes. While Tough was to blame for bringing on the conflict he withdrew therefrom and by his acts so indicated and retreated "to the wall", i.e. as far as it was possible for him to do so. One blow in the face does not justify a homicide, so Tough was within his rights in defending himself as he reasonably believed his life was in imminent danger.

5. Bo and Bud, on their way home from the ball game, stopped by Porky's in Richmond to quench their thirst. After two rounds of beer, they decided to leave for their respective homes. Upon departing the establishment, they noticed that the Salvation Army was holding a religious service on the street corner and Bo, on the insistence of Bud, broke up the assembly by heckling the speaker. Bud took no part in the heckling, and stood quietly by. Bo was tried and convicted in the Hustings Court of the City of Richmond for disturbing the assembly met for worship of God, an act made a misdemeanor by Section 16.1-239 of the Code of Virginia. Bud has been informed that the Commonwealth's Attorney intends to have him prosecuted for the same offense as a principal. He asks your advice on whether he can be convicted as a principal. What should you advise him?

(CRIMINAL LAW) He can. "In misdemeanors, there are no accessories, all concerned being principals". Every person who is present at the commission of a trespass or misdemeanor encouraging or inciting the same is, in law, assumed to be an aider and abettor, and is liable as principal. 153 Va. 504.

6. Jacob Smith was a prominent politician of Amherst County. Bill Davis was a young man who successfully operated a service station in the County despite the competition of other operators. For more than a year Bill had been actively campaigning for an amendment of the Constitution of Virginia so that the constitutional offices of the several counties could be merged into one and, by so doing, reduce substantially the cost of county government. Jacob was bitterly opposed to any merger or consolidation of county constitutional offices and on numerous occasions asked Bill to stop publicly advocating this amendment. When Bill refused, Jacob enlisted the aid of several of his political friends and, through use of their political influence, succeeded in causing most of Bill's regular customers to stop dealing at the service station. As a result, Bill's business has become reduced to the point that he fears he must close the station.

(a) Does Bill have a civil remedy against Jacob?
(b) Has Jacob committed a crime?

(CRIMINAL LAW) (TORTS) (a) Yes. A combination lawful in itself may become a conspiracy when the purpose in view is to ruin or damage the business of another because of his refusal to do some act against his will or judgment. Here Bill has been damaged as a proximate result of the malicious acts of Jacob and his political friends. See § 12 Conspiracy, 4 M. J. 82; 117 Va. 569.

(b) Yes. A criminal conspiracy is a confederation to do something unlawful, either as a means or an end, and consists of a combination of two or more persons by concerted action to accomplish an unlawful purpose. See § 3 Conspiracy, 4 M. J. 70, and 94 Va. 927.
6. Bold and his wife, Vindictive, were having marital difficulties. One evening Bold returned home to discover that Vindictive's father, Ruthless, was helping her pack her belongings. When he was informed that Vindictive intended to take their 3-year-old child Peanut with her, he objected and a struggle ensued. Ruthless knocked Bold senseless with a chair, and left with Vindictive and Peanut. Upon recovering, Bold armed himself with a pistol for protection and went to Ruthless' home, hoping to effect a reconciliation with his wife. He entered the house, and hearing sounds from upstairs, he proceeded in that direction. As he reached the top of the stairs he called out to his wife. He found that his wife was in the bedroom and the door was locked. Over the protest of Vindictive and Ruthless, Bold kicked the door open and rushed into the room. He found himself confronted by Ruthless who was holding a rifle pointed directly at him. Bold pushed his wife and child aside as Ruthless began firing at him. Although Bold avoided being shot he drew his pistol and shot Ruthless between the eyes. Bold was indicted for murder. At the trial his attorney requested instructions on self-defense and manslaughter. The court refused to grant both instructions. Did the court err in refusing to grant either or both instructions.

(CRIMINAL LAW) The court did not err in refusing to grant an instruction on self defense. Bold was a trespassing aggressor who brought on the conflict and he has no right to the protection of the law of self defense unless he first withdrew from the conflict he started. The court should have given instructions on the law of manslaughter for a jury could have found that the killing was in the heat of combat and not with malice aforethought. See 165 Va. 669.

7. Hal Buckeye was indicted and tried in the Circuit Court of Warren County, Va., on a charge of perjury. The indictment, in proper form and containing the proper language, charged that in the trial of the case of Commonwealth v. Rake, in the County Court of Warren County, Va., wherein Rake was charged with driving under the influence of intoxicants, Hal Buckeye falsely testified "that Herman Rake had two bottles of beer to drink while he was in my home in Luray, Va., at about 5 o'clock on the afternoon of Feb. 10, 1962." Upon the perjury trial the Commonwealth proved the following facts: Herman Rake was tried in the County Court of Warren County, Va., on a charge of driving while under the influence of intoxicants on Feb. 11, 1962; an oath to tell the truth was properly administered to Buckeye by the judge of the county court before he testified as a witness on behalf of Rake; while testifying in that case Buckeye made the statement charged in the indictment, when in truth, at 4 p.m. on Feb. 10, 1962, Herman Rake was in Washington, D.C., and Hal Buckeye was in Staunton, Va., Rake had had 4 bottles of beer, and 2 ounces of whiskey to drink within a period of 2 hours before he was arrested for driving under the influence of intoxicants in Warren County, Va., at 6 p.m. on Feb. 11, 1962; Rake testified that he had left Buckeye's home in Luray about 4 p.m. on Feb. 11, 1962, and that all he had to drink were the two bottles of beer while he was in Buckeye's home. After proving the foregoing facts the Commonwealth rested its case, whereupon the accused moved to strike the evidence. How should the court rule on the motion?

(CRIMINAL LAW) The motion should be granted. What Rake had to drink on the afternoon of Feb. 10th was immaterial. Besides there is no evidence that the false testimony was willfully falsified. Buckeye may have merely had his dates mixed. To constitute perjury there must be willfully false testimony about a material fact. See 198 Va. 161.

4 June 1963.

1. Hager was employed by Merchant as a clerk in his store. One day, Merchant, as he was leaving town, handed Hager $200 in cash, telling him to deposit it in the Bank to Merchant's credit as he had done on other occasions. Hager forgot to make the deposit and that night, having lost the money in a poker game, left for parts unknown. Of what offense, if any, is Hager guilty?

(CRIMINAL LAW) Hager is guilty of grand larceny on one of two theories. If Hager merely had custody of the money as a servant he is guilty of common law larceny. If he had possession as a bailee for his employer he is guilty of embezzlement by statute, and the statute (V/#18.1-109) makes embezzlement larceny.
Fleece, who had been suspected by the police of several large thefts in Hanover County, Va., was indicted in the Circuit Court of that county for grand larceny of a 13-carat diamond ring stolen from Doswell Jewelry Co. on October 7, 1962. At the trial Fleece pleaded not guilty. The Commonwealth's evidence was that the ring described in the indictment had been stolen from the store about 1:00 p.m. on the date alleged, by someone unseen by the clerks; that at 2:30 p.m. the police, armed with a search warrant, went to a rooming house nearby and entered a third-floor room therein occupied by Fleece and three others; that, finding Fleece alone in the house and asleep, they awakened him, and he denied any knowledge of or complicity in the crime; and that they then searched the bathroom used by all the roomers on the third floor and found the ring concealed under the sink. The Commonwealth finally proved that while being taken to the sheriff's office Fleece had escaped from the police, but that he had been quickly captured. At the conclusion of the Commonwealth's evidence, Fleece moved the court to strike the evidence.

How should the court rule on Fleece's motion?

(CRIMINAL LAW) His motion should be granted. He was not found in the exclusive possession of recently stolen property. While an attempt to escape is some evidence of guilt it is not enough in itself to constitute proof beyond a reasonable doubt as the flight might be due to other causes such as fright or a belief that he had been framed, or that no one would believe him even if he told the truth. See 198 Va. 365 at the bottom of p.2028 of the Criminal Law Cases of these notes.

5. Jasper believed no suitor was good enough for his daughter Prunella, and he was prone to be anxious about the motives of all the young men who called on her. One suitor, Shady, was particularly attentive to Prunella, so much so that Jasper became very disturbed. As Shady's visit with Prunella one evening extended past midnight, Jasper had tried to calm his nervousness with strong drink, and was very intoxicated as Shady left Prunella at the front door. When Shady came out of the door, Jasper was behind some boxwoods near the door. Jasper jumped out and drunkenly cursed Shady. Startled, Shady turned toward Jasper, and Jasper hit him on the head with a stick. The blow proved fatal to Shady.

Jasper was indicted for murder in the proper Virginia court. At the trial the above facts were proven by the Commonwealth. At the conclusion of all the evidence, Jasper moved the court(1) to instruct the jury that it was within their province to find him not guilty of first degree murder if they believed his intoxication rendered him incapable of doing a deliberate and premeditated act; and (2) to instruct the jury further that they could find him not guilty of murder in the second degree if they believed his intoxication negated malice on his part altogether.

How should the court rule on Motions (1) and (2)?

(CRIMINAL LAW) The first motion should be granted. A man may be so drunk that he is incapable of having the required specific intent or express malice necessary for murder in the first degree. The second motion should be refused as voluntary drunkenness is not allowed to decrease murder to manslaughter. General malice required for murder in the second degree can be inferred from the killing. See 6 M.J., Drunkenness, #12.

While Jones was busily watching a street performance, Sly slipped up behind him and took from his pocket $15 in money which he put in his own pocket. Sly then turned and started to leave and Watchful called out, "Catch that thief; he has just robbed this gentleman." Upon hearing this, Jones turned around and saw Sly backing away. Jones started toward him; saying, "You've robbed me; I'll get my money back", and Sly presented a pistol at Jones, saying, "If you come another step toward me, I'll kill you." Jones stopped and Sly, still covering Jones with the pistol, got into his wife's waiting automobile and fled. Of what offenses, if any, is Sly guilty in Virginia?

(CRIMINAL LAW) Sly is guilty of grand larceny since he took five dollars or more from the person. He is not guilty of robbery as the larceny was complete before he used threats of force. He is guilty of a criminal assault since he was not privileged to put Jones in apprehension of an immediate disagreeable bodily contact.
Ike Morgan was indicted in the Hustings Court of the City of Roanoke for grand larceny of a diamond ring of the value of more than $50. At the trial, evidence introduced by the prosecution clearly showed that Ike when arrested was in the exclusive and recent possession of the stolen ring. Ike testified that the ring was given to him by a man from North Carolina who had since gone to West Virginia. At the conclusion of all the testimony, the attorney for Ike Morgan requested, among others, the following instruction:

No. 4

The Court instructs the jury that the defendant is presumed to be innocent, and that this presumption carries all through the trial until the Commonwealth upon whom the burden rests, has shown you by clear, distinct and reliable evidence, and to the exclusion of all reasonable doubt, that the defendant is guilty, and if the Commonwealth has failed in this, it would be your duty to acquit.

The attorney for the Commonwealth objected to the granting of this instruction on the ground that the recent, exclusive possession of stolen goods shifted the burden of explanation to the defendant, and that, therefore, the instruction offered was not proper. How ought the Court rule on this instruction?

(CRIMINAL LAW) The Court should grant the instruction as it properly states the law. The Commonwealth has the ultimate burden of proof to prove its case beyond a reasonable doubt. The presumption of guilt from the unexplained and exclusive possession of recently stolen property is only a presumption of fact, or circumstantial evidence of guilt, and does not affect the ultimate overall burden of proof. See 177 Va. 830, 13 S.E.2d 285 on p. 416 of the Evidence Cases in these Notes.

Earl Buchanan, a college student, was convicted of involuntary manslaughter by a jury in the Circuit Court of Orange County. Facts established by the evidence during the trial showed that Buchanan, while driving in an intoxicated condition, struck Pedestrian, broke his leg and rendered him unconscious, and that Pedestrian was taken to the hospital where he rested comfortably. The physician testified that the next day at noon he found Pedestrian dead, and further testified that the immediate cause of death was "acute pulmonary edema of the lungs," a condition in which fluid collects in the lungs. He further testified he did not know the origin of the condition, and found only a broken leg when he examined the patient.

Counsel for Buchanan moved to set the verdict aside. How should the Court rule?

(CRIMINAL LAW) The motion should be granted. The Commonwealth has failed to prove the corpus delicti which consists of two components in homicide cases: (1) Death as a result of (2) the criminal agency of the defendant as the means. 171 Va. 505, 198 S.E. 911 on P. 2001 of the Criminal Law Cases of these Notes.

Sally Goode was found dead in her room, and the following note lay beside her bed: "Life is too difficult. I hope all will forget me." An autopsy showed that she had died from an overdose of sleeping pills. No one could attribute any reason for her suicide until Bill Rogue walked into the office of the Commonwealth's Attorney and delivered to him the following written statement: "I am responsible for Sally's death. She was a nice girl who I promised to marry and her death occurred after I had seduced her in this County. Thereafter, I refused to marry her, and I left her when she said she would kill herself. I am solely to blame and desire that you use this statement in Court in order to convict me." Bill Rogue was indicted for seduction and on his trial the foregoing facts and statement were the only evidence introduced. When the Commonwealth rested, counsel for the defense moved to strike the evidence. Should the motion have been granted?

(CRIMINAL LAW) Yes. The corpus delicti (here the fact that deceased had been seduced) cannot be proved by the uncorroborated confession of the accused made out of court.

There have been too many cases in which persons have confessed to crimes that have never been committed to make such a confession the equivalent of proof beyond a reasonable doubt. See 192 Va. 804.
2. Albert Bruno had owed John Fitz $70 for more than a year. Although Bruno did not deny the debt, he constantly told Fitz that he was leading a "hand to mouth" existence and did not have any money with which to make payment. Learning that Bruno had considerable means and that his statements of poverty were utterly false, late one evening Fitz stopped Bruno on a dark street corner, pressed a revolver into his ribs, and said: "Pay me the $70 you owe me immediately, or I will kill you." Bruno, out of fear for his life, pulled out his wallet and handed Fitz $70 in cash. Fitz then pocketed the money and departed. Of what crime or crimes, if any, was Fitz guilty? (CRIMINAL LAW) Fitz is guilty of an assault and battery. He was not privileged to use the methods of a highwayman to collect the debt. He is not guilty of larceny or robbery because he had no intent to take more than the $70 which was due him. Hence he did not have the specific intent to deprive Bruno of that to which Bruno was entitled. 145 Va. 800.

1. Lewd was indicted for bigamy in the Circuit Court of Warren County, Va., the indictment charging that he had contracted a bigamous marriage with Strumpet. At his trial the Commonwealth proved the following facts: On February 6, 1961, Lewd obtained a decree of divorce on the ground of desertion occurring December 6, 1960; on April 8, 1961, Lewd married Bawd, in Silver Spring, Maryland, and lived with her in Maryland for a period of six months; on November 1, 1961, Lewd returned to his former home in Warren County, Va., but did not cohabit with Bawd in Virginia, and on December 19th of that year he filed a petition in the Circuit Court of Warren County to merge the decretal decree of divorce with Strumpet. At the conclusion of the trial the Commonwealth entered a decree dissolving the bonds of matrimony; on December 29, 1961, Lewd married Strumpet in Warren County and was living with her in that county on the date the indictment was returned. Counsel for Lewd moved to strike the evidence of the Commonwealth.

How should the court rule? (CRIMINAL LAW) The evidence should be stricken. Under Va. Code 20-41 it is not bigamy in Virginia unless both marriages take place in Virginia, or there is cohabitation in Virginia with the out of state party. At the present time there is no longer any waiting period after a divorce before a second marriage can be legally consummated.

2. Johnnie Hobo, who had spent most of his life loafing, decided that the time had come for him to go to work and to live a better life. He applied for a job with a well-known and successful business corporation. He was sent a questionnaire which called for answers respecting his education, training, and past experience. Although the questionnaire did not call for answers under oath, Hobo, believing that his application would carry greater weight if it were sworn to, did swear to the truth of his answers before a Notary Public. The Notary Public affixed her certificate at the bottom of the questionnaire showing that Hobo had duly made oath that the answers contained therein were true and correct. Hobo was employed, and after working for the company for a period of sixty days he was discharged as his work was found to be entirely unsatisfactory. Upon investigation his employer found that all of the answers to the questionnaire were false. Shortly thereafter Hobo was indicted for perjury by a Virginia court having jurisdiction. Upon the trial of his case the foregoing facts were established by proof. At the conclusion of the evidence, the accused moved the court to strike the evidence of the Commonwealth and direct a verdict of acquittal. How should the court rule? (CRIMINAL LAW) The evidence should be stricken. It is not perjury to swear falsely about matters not required to be sworn to. See Va. Code 18.1-273 and annotations thereto.
3. On November 14, 1964, Calvin Edwards was arrested in the City of Hopewell and
charged with having driven an automobile while under the influence of intoxicants,
65 miles per hour in a 25 miles per hour traffic zone. Edwards' case was set to be
tried on November 23rd in the Municipal Court of the City of Hopewell, and he was
released on posting a $50 bond for his appearance on that date. On the day of the
trial Edwards failed to appear and, in his absence, the court heard evidence, found
Edwards guilty of the offense charged, and sentenced him to confinement in jail
for thirty days. On December 5th Edwards was apprehended and jailed. Edwards now
consults you and tells you that he is not guilty of the offense charged, and shows
to your satisfaction that he failed to appear at the trial because of an urgent and
unforeseeable business engagement. He inquires whether he has been denied a con­stitutional right and whether he may obtain his release from jail by habeas corpus
proceedings. What should you advise him.

(CRIMINAL LAW)(CONSTITUTIONAL LAW) V#19.1-180 reads in part, "No capias to hear
judgment shall be necessary in any prosecution for a misdemeanor, but the court may
proceed to judgment in the absence of the accused; and, if such judgment requires
confinement in jail, the court may make such order as may be necessary for the
arrest of the person" convicted. This does not deprive defendant of his right of
confrontation or of a jury trial since he has an appeal, and was given an opportuni­ty to appear.

Note: In 101 Fed.Suppl. 806 it is said, "Authority conferred by this section to
try a misdemeanor charge in the absence of accused is not a right given him; it is
a privilege accorded only to the court. It does not relax the defendant's obliga­tion to appear in obedience to the mandate of the summons."

1. Dooley had a quarrel with Rowdy at the latter's house, and Rowdy threw Dooley cut
on the street. Dooley adjourned to a tavern and, over several beers, told his frie­nds:
Boisterous of these events, became increasingly angry, and finally stated that he
was going back and give Rowdy a beating to teach him a lesson. Boisterous said he
would come along and get in a few licks as he didn't like Rowdy either. On their
way to Rowdy's house, they met Rowdy on the street, and after a few words, a fight
ensued. Boisterous hit Rowdy a couple of ineffective blows and stepped back to take
off his coat. Dooley, who was then getting the worst of the fight, pulled out a
pistol and shot twice, one bullet striking and killing Peaceful, a stranger walking
on the other side of the street, and the other striking and killing Rowdy. Boiste­rous did not know that Dooley had a gun on his person or that Dooley had any inten­tion of using any weapon of any kind on Rowdy.

Dooley was convicted of voluntary manslaughter of Rowdy and voluntary manslaughter
of Peaceful.

(a) Can Boisterous be convicted of voluntary manslaughter of Rowdy?
(b) Can Boisterous be convicted of voluntary manslaughter of Peaceful?

(CRIMINAL LAW)(A) Yes, he is liable as a principal in the second degree. Boisterous
could reasonably foresee that if they set forth to beat Rowdy up in his own home
things could easily get out of hand and someone might be killed, and that is exactly
what happened. Boisterous was present aiding and abetting Dooley in the fight.

(B) Yes, for the same reasons as above. While Dooley did not actually intend to
shoot Peaceful, he did intend to shoot Rowdy, and he is liable for killing Peaceful
on the theory of transferred or constructive intent, and Boisterous stands in
the same position as Dooley whom he was aiding and abetting. See V#18.1-11; 130 Va.
733; 130 Va.741.
2. Stevens, while shopping in the small town of Winsome, Va., had seen Tread, who, he knew, had a reputation for being a violent man, and he could see that Tread had been drinking and was very quarrelsome. Stevens returned to his farm, which was right outside the town, and while having his lunch, heard over the radio that the town's mayor had been killed by a person who filled Tread's description though no identification by name was made. Fifteen minutes later Stevens heard a commotion in the yard and went to his back door in time to see Tread in his driveway, twenty-five feet away. Tread was then finishing pouring some gasoline from one of Stevens' tractor gas cans into the tank of Tread's automobile. Tread cursed Stevens and said he had run out of gas and was taking some whether he liked it or not as he had to get out of town. Stevens saw nothing indicating that Tread was armed and Stevens was then standing in his back doorway. Although Stevens' loaded shotgun was immediately next to the doorway and within his reach, he made no effort to pick it up or to stop Tread. Tread walked around his own automobile, got into it, and left.

Two hours later, the police came by Stevens' home and advised they were looking for Tread for the murder of the mayor; but Stevens, not wishing to become involved, said nothing to the officers about the above events. Tread was never captured, tried, or convicted of the murder of the mayor.

Stevens was arrested and by indictment, proper in form, was charged with being an accessory after the fact in that he assisted Tread in escaping and evading arrest for the felony committed by him. Tread. At the trial, witnesses testified that they saw Tread kill the mayor, and the Commonwealth proved the above-stated facts as to Stevens. At the close of the Commonwealth's evidence, Stevens moved to strike the evidence (1) on the ground that Tread had not been tried or convicted of the murder, and (2) on the ground that the evidence was not sufficient to sustain a verdict of guilty as to himself. How should the court rule on each ground of this motion? (CRIMINAL LAW)(1) The first motion should be denied. V/M 1 13 reads in part, "An accessory, either before or after the fact, may, whether the principal felon be convicted or not, be indicted, tried, convicted and punished in the county or corporation in which he became accessory, or in which the principal felon might be indicted.

(2) The second motion should be granted. Stevens did nothing actively to aid Tread to escape. Nor, at that time did Stevens know for sure that Tread was the man who killed the mayor. Stevens was within his legal rights in not volunteering to give information. See 1 M.J. Accomplices and Accessories #5.

5. Lothario has been "going steady" with Buxom for several months, and, believing that his visit and amorous advances would not be unwelcome, after she had retired for the night, sought to enter her bedroom by raising a closed window. He had just entered the house when he was surprised and arrested by a policeman.

Assuming the above facts, of what offense, if any, is Lothario guilty? (CRIMINAL LAW) Lothario is not guilty of any crime as burglary and statutory breaking statutes all require a breaking and entering with the intention to commit some sort of felony. He would not even be guilty of a trespass if he had. Buxom's implied consent and she was in possession of the premises in question. If the premises were owned and occupied by Buxom's parents and Buxom was under the age of consent Lothario would have been guilty of burglary.
Cobb and Dunn engaged in a fist fight in which Cobb, who was the aggressor, injured Dunn painfully but not seriously. Bystanders parted the contestants but Cobb broke loose and started to renew the fight. However, seeing blood streaming from Dunn's nose, Cobb stopped and turned away saying, "I have hurt the bastard enough." Dunn, incensed at the injury he had received and smarting from the epithet, pulled a pistol and, when Cobb had walked about thirty feet away from him, shot Cobb in the back, killing him instantly.

Dunn was indicted for murder in the first degree. Upon the above facts ought the court to grant the instructions following?

(1) "The Court instructs the jury that a mortal wound given with a deadly weapon in the previous possession of the slayer, without any or very slight provocation, is prima facie ill willful, deliberate, and premeditated killing, and casts upon the defendant the necessity of showing extenuating circumstances."

(2) The Court instructs the jury that if the defendant believed, at the time of firing the fatal shot, that he was in danger of death or great bodily harm, at the hands of the deceased, then he had the right to defend himself, and, if necessary, kill his adversary."

(CRIMINAL LAW) (1) Yes, for it is supported by the evidence in this case since words alone do not constitute a sufficient provocation, the deceased had withdrawn from the conflict, and defendant knew he had withdrawn and it correctly states the law.

(2) This instruction should not be given as there is no evidence to support it. The defendant never believed his life was in danger under the facts as given.

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Accused pushed open the closed door and entered the dwelling house of Jones during the nighttime with intent to steal some money therein, but because he was discovered, he grabbed only a watch valued at $45, ran out of the house and escaped in a waiting automobile driven by Smith, who knew his purpose and had been keeping watch for him.

(a) What offense did Accused commit?
(b) What offense, if any, did Smith commit?

(CRIMINAL LAW) (a) Accused committed the crime of burglary as a principal in the first degree and in addition larceny if specifically indicted (although the question asks for only one offense). Others, such as trespass, merge into the burglary offense. (b) Smith committed burglary as a principal in the second degree as he was present, aiding and abetting accused. Va.Code 18.1-86, 18.1-11 (Anno).

At Paul Grant's request, John Laumen drew a deed for the conveyance of Grant's farm in Halifax County to Grant's grandson Earl Todd. The deed was perfect in every detail and recited its consideration to be the love and affection borne by Grant for Todd. After the deed was drawn, Lawman showed it to Grant who approved and duly executed it. Grant left the deed with Lawman who agreed to have the instrument recorded. As soon as Grant left Lawman's office, and in keeping with a plan conceived by him while drawing the deed, Lawman deleted from the deed Todd's name as grantee and substituted his own. The next day Lawman had the deed recorded, conveyed the farm to another, and pocketed the proceeds of the sale.

Of what crime or crimes, if any, is Lawman guilty?

(Criminal Law) Lawman is guilty of forgery for deleting the name on a deed, an instrument of legal efficacy. He is also guilty of uttering because he recorded the deed. An accused may be found guilty of both uttering and forgery. He is perhaps also guilty of larceny by trick since he used the deed illegally to obtain property. However, it has been held that such an accusation, coupled with the others, is double jeopardy. See 205 Va. 867.
Chiseler, a pawnbroker in the City of Alexandria, became financially embarrassed because of loss of business to a newly opened pawnshop two blocks down the street. For several years Chiseler had had his shop and its contents heavily insured against loss by fire. To obtain relief from his financial difficulties, Chiseler decided to set fire to his pawnshop and collect on his insurance policy. To carry out the scheme, late one night Chiseler set fire to his pawnshop with gasoline soaked rags with the result the pawnshop and its contents became a total loss. The morning after the fire, the Police Department, in going through the ruins, found a charred human body which was shortly thereafter identified as that of Hobo. Several days later Fighter, a young and energetic Assistant Commonwealth's Attorney, located Drifter who stated to Fighter that, shortly before the fire, he and Hobo had broken into Chiseler's pawnshop to commit larceny; that, while Drifter and Hobo were hiding in the rear of the pawnshop, Drifter saw Chiseler come in the front entrance, start the fire, and hurriedly leave; and that Drifter managed to escape from the premises leaving Hobo behind.

Assuming all these facts can be proven, can Chiseler be found guilty of murder?

(Criminal Law) The felony-murder rule does not apply here, since, according to Va. Code 18.1-21, common law arson has not been committed. Pawnbrokers' shops are not normally places where people reside, so there was no reason to believe that anyone else would be there besides the culprits. Criminal statutes must be strictly construed.

1. Bold and his wife, Vindictive, were having marital difficulties. One evening Bold returned home to discover that Vindictive's father, Ruthless, was helping her pack her belongings. When he was informed that Vindictive intended to take their three-year-old child Peanut with her, Bold objected and a struggle ensued. Ruthless knocked Bold senseless with a chair, and left with Vindictive and Peanut. Upon recovering, Bold armed himself with a pistol for protection and went to Ruthless' home, hoping to effect a reconciliation with his wife. He entered the house, and hearing sounds from upstairs he proceeded in that direction. As he reached the top of the stairs he called out to his wife, and Ruthless told him not to enter the room. He found that his wife was in the bedroom and the door was closed. Bold opened the door and walked into the room. He found himself confronted by Ruthless who was holding a rifle pointed directly at him. Bold pushed his wife and child aside as Ruthless began firing at him. Although Bold avoided being shot he drew his pistol and shot Ruthless between the eyes. Bold was indicted for murder. At the trial his attorney requested an instruction on self-defense. The Court refused to grant the instruction.

Did the Court err in refusing to grant the instruction?

(CRIMINAL LAW) No. Bold has here wrongfully occasioned the necessity of the altercation. His breaking and entry into Ruthless' house is a misdemeanor, and if this was the act which provoked the deadly assault on him and which in resisting, he killed Ruthless, he is guilty of manslaughter. There is no error.
In 1966, the Legislature of State X enacted a statute which recites that it is unlawful for any common carrier operating within the State to discriminate in providing intrastate transportation to a resident of the State, where such discrimination occurs because of the resident's political affiliation. The statute further provides that, for each violation, the offending common carrier is guilty of a crime punishable by a fine of not more than $5,000, upon conviction before a criminal court of the State. The statute finally provides that, from such conviction, the common carrier shall have no right of appeal to the Supreme Court of the State.

In April of 1967, the Southwest Railway Company was convicted of having violated the statute and was fined $5,000. From that conviction, the Railway Company has sought an appeal to the Supreme Court of State X, asserting that the conviction was without proper evidence to support it, and that it has a right of appeal under the due process clause of the 11th Amendment of the Federal Constitution.

Assuming that the Constitution of State X is silent on rights of appeal, and that the conviction of the Railway Company in the lower criminal court was without proper evidence to support it, may be Supreme Court of State X grant the appeal?

(CRIMINAL LAW) No. The right of appeal is no part of due process of law. All that a litigant can ask is that in some appropriate way, before some duly constituted tribunal, his culpability shall be determined. When the legislature has prescribed limitations within which the right of appeal may be exercised, such limitations are exclusive, and the Supreme Court of State X cannot modify or enlarge them without express statutory authority.

1. Ferret was tried on an indictment, proper in form, for larceny of a watch from Zale Department Store on Nov. 1, 1967. At the trial, the Commonwealth showed that Ferret walked past the store each day on his way to work and frequently traded there; that on a properly issued warrant, the rooming house where Ferret lived was searched by officers on Nov. 5, 1967, and though nothing was found in his room, the watch was found hidden in the rafters behind Ferret's trunk in the attic storeroom where Ferret and three other roomers kept their trunks and stored belongings. Ferret denied taking the watch but offered no explanation as to its being found behind his trunk and offered no evidence as to anyone being in the attic between Nov. 1 and Nov. 5.

After being convicted by the jury, Ferret moved to set the verdict aside on the ground that the evidence was insufficient for a conviction.

How should the court rule on the motion?

(CRIMINAL LAW) The court should sustain the motion to set aside the verdict. In order to raise the presumption of guilt from the possession of the fruits of crime by the defendant, it is necessary that they be found in his exclusive possession. A constructive possession is not sufficient to hold the defendant to a criminal charge. Here, by, proving only that the accused was one of four persons having access to the storeroom in which the watch was found, the Commonwealth has failed in its burden to prove that the watch was in the accused's exclusive possession.

120 Va. 866; 130 Va. 761.
2. Sally had retired for the night in her small farmhouse situated on the side of a
country road but left a light burning in her bedroom window, which window faced the
road, because she expected her husband back late that night. There was a knock at
the door, and she went to the bedroom window and put her head out and observed Ringo
and Starr, who were strangers and appeared to have been drinking though they were
not drunk. They asked to be put up for the night, but Sally refused and said that
she was sleeping in her bedroom and requested the men to leave. She returned to bed
and heard a voice say, "I'm going to shoot that light out." A shot rang out and a
bullet passed through the headboard of her bed, missing Sally's head by one inch.
Ringo was later arrested and by an indictment, in the proper form, charged with
the attempted murder of Sally and, at his trial, admitted firing the shot, saying
that he did not know Sally, that he bore no ill-will but was merely shooting at
the light, and that he would not have done such an act if he had been sober.

Was this evidence sufficient to convict Ringo of the crime charged?
(CRIMINAL LAW) No, since the evidence falls short of proving the shot was fired with
intent to murder Sally. A necessary element of an attempt to commit a crime is an
intent to commit it. Where an offense consists of an act combined with a particular
intent, that intent is just as necessary to be proved as the act itself, and must
be found as a matter of fact before a conviction can be had. Such intent may be
proved by circumstantial evidence, but it cannot be presumed from an act which does
not naturally indicate it. The law does not presume, because an assault was made
with a weapon likely to produce death, that it was an assault with the intent to