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Administration of Criminal Law: Final Examination (Summer 1963)

William & Mary Law School

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DIRECTIONS: Read the following questions carefully. Normally D means defendant or accused and P means the state or prosecuting agency. While some of the questions may call for specific answers, all issues raised by the questions should be fully discussed whether or not any one issue is conclusive of the specific question--or of any general question. Use the abbreviations used in the questions, but otherwise do not abbreviate.

I. D is a respected professional man who has been having moody spells when he will not talk to anyone. At other times he behaves in his normal, business-like, no-nonsense manner. One day for a motive never established, D murdered his wife and two children in their sleep, then burned the house. When suspected and apprehended, D at first denied the crime, but later confessed fully saying he deserved the electric chair. The confession was given to the Prosecuting attorney (P), and when given D confided to P alone that he would only tell P because the police had beaten him, but that, under the circumstances he'd never say anything more about it. P is able to obtain corroborating evidence after getting the confession. Meanwhile, P learns that D was in a mental hospital during his youth, and that he should be able to produce expert testimony to the effect that he is and has been since youth a mild schizophrenic.

- (a) Assuming the confession is necessary to conviction, should P go to trial?
- (b) Assuming no legal test for insanity has been established in the jurisdiction, what test should D's attorney urge the court to adopt? Why?
- (c) Suppose D's evidence consists only of a recitation of his moody conduct and testimony by doctors that he is not schizophrenic but merely a schizoid personality. Must P attempt to prove sanity?
- (d) Assuming the answer to (c) is "yes", what instruction should the court give to the jury on this aspect of the case?
- (e) Assuming D refuses to talk to his attorney before trial, being exceedingly moody, what motion should the attorney make? If the motion is sustained, what procedure will be followed?
- (f) Suppose P is hailed by the press as a hero for obtaining the confession, and then is asked to give a TV interview on "how he did it." Should P consent to the interview?

II. The main street of town X runs along the state line of Y and Z, the town extending for some 300 yards on both sides of the line. D peddles fried fish sticks on both sides of the line which have become very popular with children. Unfortunately, unknown to anyone, some of the fish used was contaminated as a result of which six children in Y and five children in Z became ill and died. The evidence shows the children were all in Z when they bought the fish sticks, though they died in their own states. Selling contaminated food is a felony, by statute, in Y; but in Z there is no statute on the subject and a search of the books fails to disclose that the selling of contaminated food was an offense at common law. Charges are filed in Y on the basis of the statute. P, in Z, files charges of "criminal negligence," solely on the basis that the matter was heinous and ought to be punished. In both Y and Z, the charges include counts relating to all of the children. D is apprehended and arrested in Z.

- (a) Should prosecution of D be successful in Z? Why?
- (b) What procedures--describe them--are necessary for Y to obtain custody of D?
- (c) What defenses are available to D in State Y? Should they be successful?

III. D was indicted for murder. Upon his trial evidence was introduced that the handwriting on certain of D's letters to his wife corresponded with the handwriting on a note to a druggist written by D which note was for the order of rat poison containing arsenic (found to be the murder "weapon"). D was convicted and appealed. His conviction was reversed and a new trial granted on the ground that it was error to allow the introduction of D's letters to his wife. Prior to D's second trial, the legislature passed a statute allowing the use of such evi-

On the second trial the same evidence was used. / used, and, in addition, P argued to the jury that "the evidence showed D to be a brutal, wanton, malicious killer, who treated human beings as though they were rats; that the evidence showed that he went after his victims like a black snake would go after a rat; and that the evidence showed he should be put to death in the electric chair, for that would be more merciful than the mercy he showed his victim." D was again convicted and now appeals, raising questions of former jeopardy, ex post facto and prejudicial argument on the part of P. Should D again be successful on appeal, and if so, should P again prosecute?

IV. A is a former major league baseball hero who has just been elected sheriff of the county of which you are the prosecuting attorney. The first day he is in office he makes two arrests (with proper warrants) and now appears in your office to inquire what to do next. You immediately realize A needs an explanation of the entire criminal procedure (except arrest). What should you tell him, assuming the procedure in your jurisdiction parallels substantially the Federal procedure?

V. The law of state X (in which the following events took place) makes it a felony to possess, without having a prescription from a licensed physician therefor, morphine. Another law provides that any person who "aids, abets, counsels, commands, induces or procures in the commission of a felony may be prosecuted as a principal to the crime". D, not having a prescription for morphine, sold morphine to D-1 who, in turn sold it to D-2. The morphine was found in D-2's possession when he was picked up by the police who had neither search nor arrest warrant, the police having observed D-2 peeking into a back window of the YWCA immediately before the arrest. Following the arrest, D-2 was booked for possession of morphine. He immediately asked to call his lawyer, but was refused since he was penniless and did not have a dime for the phone. Interrogation followed, including the ordinary third degree methods, all the time D-2 demanding his lawyer. Finally D-2 owned up to the fact that he thought the morphine came from D. Thereupon D was arrested on the basis of a properly issued warrant and charged with conspiracy to possess morphine. When arraigned, D was without counsel so the court appointed a lawyer for him who, however, thought he could do nothing for D since D-2 had "squealed on him." Thus, the lawyer advised D to plead guilty and, while he appeared with him for sentencing, failed to respond except perfunctorily when the judge asked if there were any reason why D should not be sentenced. Meanwhile, D-2 was indicted for possession of morphine. Since he really never had a lawyer to call, and is indigent, you are appointed counsel to defend both D and D-2. You hate dope peddlars, considering them the lowest form of human life, as does everyone else in your community. Will you take the cases (appeal for D and trial for D-2) and, if so, what defenses/points on appeal will you make?