

23 EXAMS
(3 MISSING
BECAUSE OF
IN ABSENCE)

CRIMINAL LAW
SECTION B3

Mid-Term Examination
December 17, 1979

Two and 1/2 Hours
1:30-4:00



"But I thought once the I.R.S. applied a penalty, that was the end of it."

OPEN BOOK

Instructions

Each of the three problems is of equal weight. Budget your time accordingly.

Answer all the questions reasonably raised in each problem even though your resolution of a prior issue in the same problem may technically make decision of the other issues immaterial. If you believe that you need more facts than are presented to adequately resolve an issue, indicate specifically what facts you believe you need and why.

Specific citations to cases are welcome but not as a substitute for thinking, i.e. do not use case citations instead of clearly stating the relevant point of law.

I.

In Commonwealth v. Illich, ___ Pa. Super. ___, 405 A.2d 937 (1979), the Pennsylvania Superior Court found the following facts established in the trial court:

"Two groups of men were involved in fights over a period of days. Illich was reluctant to get involved, but on the day of the killing agreed to join A and B in an attempt to inflict bodily harm on X, Y and their associates. Illich took a .32 caliber gun with him and A and B took baseball bats. At 9:00 p.m., A and B and Illich proceeded by car to X's neighborhood. A was driving, B was in the front seat and Illich was in the back.

"Upon arriving in X's neighborhood, they found Z (the victim) and associates on a corner. Illich got out of the car with a bat and sought a fight. His invitation was declined. He reentered the car and announced that, if anyone threw anything at the car, 'youse all bought it.' While the evidence is contradictory and the court indicated a few items may have been thrown at the car, no threat apparently resulted. Nevertheless appellant pointed the gun out the window, the crowd dispersed and he fired in the direction of those running. The car then left.

"Z, with four others, got in a car and pursued. In this connection, Illich was aware, when he agreed with A and B to go to X's and Z's neighborhood, that fights had previously occurred. (Specifically, X, associated with Z, had on July 3, 1976, thrown bricks at A's car. A and four others responded on July 8, 1976, by beating X. On July 9, 1976, a fist fight occurred between X's associate and A. After this fight, A contacted Illich to assist and that is when Illich agreed and brought along the gun.)"

* * *

"The pursuit continued until A's car stalled. Z went up to A's window and started to punch him. Z was then shot and killed. The Commonwealth could not establish who shot Z, but Illich testified he had given the gun to B and the Commonwealth is proceeding as if B shot Z."

Defendant Illich was convicted in the trial court, inter alia, of conspiracy and third degree murder. He now claims that the evidence adduced in the trial court, as outlined above, is insufficient to support convictions on those two counts. Is there any merit to these claims? Why or why not?

II.

James Carter owns a bar called "Carter's Pubbe" which is located in the State of Repose. The Repose Criminal Code § 3154(a)(ii)(3), makes it a crime punishable "by fine of not more than \$1000 and/or not more than 30 days in jail" for any individual to own a bar where a "minor"--defined as "any individual under 18 years of age"--is "knowingly served any alcoholic beverage by an employee or agent of the bar owner." It is also a crime under § 3154(a)(ii)(4) for any individual to knowingly serve such a minor.

On Saturday night, September 4, 1979, two individuals--Ronnie Reagan and Johnny Connally--entered Carter's Pubbe and asked to buy some beer. Reagan first approached a bartender, George Bush, and cogently requested: "Gimmie a beer." Bush stated: "We don't serve underage punks in this Bar--let's see some identification." Reagan responded: "Look, I'm only 2 days short of being 18, gimme a break. I'm thirsty." Whereupon, Bush went to get Reagan an ice-cold glass of Repose City Light. Overhearing all of the above, Edward Kennedy, an undercover law enforcement agent working for the State of Repose Liquor Commission, immediately placed Bush under arrest for attempting to serve a minor under Repose statute § 3154 cited above. Ironically, however, Reagan was perfectly within his rights in asking to be served a beer since he was in fact 18 years old. Due to a rigorous travelling schedule the past few weeks, he had totally lost track of time. In fact, his 18th birthday was the day before--on September 3, 1979.

Meanwhile, at the other end of the Bar, oblivious to all of this activity down at Reagan's end, Reagan's friend, Johnny Connally, was ordering a frosty mug of Repose City Beer. Howie Baker, the bartender on duty at this section of the Bar responded: "Show me some identification first. You don't look a day over 17-1/2." In response, Connally tendered a wallet-sized certificate labelled "Universal Identification Card" issued by the "American Milk Producers" which purported to show that Connally was indeed 18 years of age. However, if the truth be known, Connally was in fact only 17-1/2 and he had obtained his "Universal Identification Card" by sending in \$6.00 and three empty milk containers to a Post Office Box in New York City. Seeing Connally's phony ID, and suspecting that something might be fishy with regard to Connally obtaining his beer, Kennedy, not only a diligent undercover agent but a charismatic leader not subject to panic, immediately arrested Baker for violating § 3154, the Repose liquor law cited above. Baker was arrested the moment Connally sipped his first delicious mouthful of Repose City Beer.

On September 6, 1979, your client (he pays well), James Carter, was arrested and charged with one actual and one attempted violation of § 3154(a)(ii)(3). One charge was based upon the attempt to sell to Reagan; the other charge was based upon the sale to Connally. What possible defenses does Carter have to these charges? What are his chances of success with each of those defenses? Why?

III.

A recent law review commentary concluded:

"There are compelling reasons to use civil rather than criminal sanctions in order to deter illegal corporate activity. First, the rationale for imposing criminal penalties on such activity is problematic. The criminal law is being used to regulate behavior that is not in and of itself morally blameworthy, and indeed in some cases to impose sanctions in the absence of fault. The use of criminal sanctions for purely regulatory purposes represents a severe departure from the traditional aims of the criminal law--deterrence and retribution. In addition, the type of activity which results in criminal liability in the corporate setting is different from other activity; the primary concern is often with the supervisors and managers rather than with the direct actors. Thus corporate officials may be held liable for acquiescing in, or for recklessly or negligently tolerating, the illegal activity of subordinates. Finally, imposing criminal sanctions on a corporation, an artificial entity which can possess no state of mind, seems questionable in the absence of some theory which ascribes fault to the corporation itself, rather than only to its officers, directors, and employees."

"Developments in the Law--Corporate Crime: Regulating Corporate Behavior Through Criminal Sanctions," 92 Harv. L. Rev. 1227, 1369 (1979) (footnotes omitted).

Does this excerpt contain an accurate statement of current legal policy toward corporate liability and the liability of corporate officers? If it does not, how does it differ from current legal policy? Does this commentary present a compelling case for an exclusively civil approach to these matters? Why or why not?

Professor Burkoff