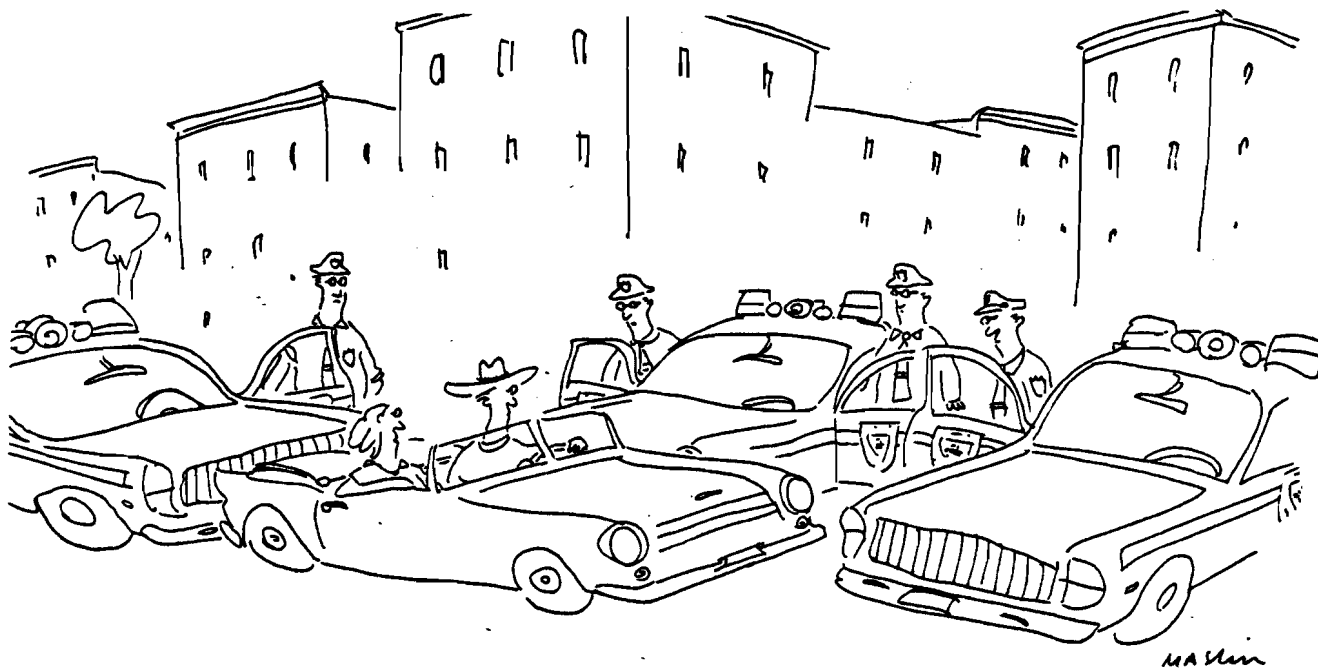


CRIMINAL LAW
SECTION B3

Mid-Term Examination
December 11, 1981

Two and 1/2 Hours
9:00-11:30



"You and your embezzling."

OPEN BOOK

(Any and all non-living materials may be consulted.)

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.

Ronald and Haig were drinking together one night in Stockman's Bar when Ronald remarked: "I just don't get any respect anymore from my wife, Nancy. She hasn't paid any attention to me since she started Law School." Haig commiserated with Ronald for a while, and then Ronald added: "You know what someone should do--someone should put a scare into Nancy. If someone scared her enough, then she would want to have me around to protect her. Just scare her. It wouldn't break no law just to scare her." "I'm just the man to do the job," said Haig, "People think I'm real scary." Five minutes later, while Ronald was visiting the men's room, Haig approached the bartender, Stockman, and asked to borrow the shotgun Stockman kept behind the bar. "Take out all the shells," he told Stockman, "I just want to borrow this for a few minutes to go put a scare into Nancy."

Haig took the gun and went directly to Ronald and Nancy's ranch house where he waited outside in the bushes. A few minutes later, someone emerged from the house. Haig thought that it was Nancy but in fact it was Weinberger. Haig jumped out of the bushes and pointed the gun at Weinberger. Although he did not intend to pull the trigger, in all the commotion, the gun (which Stockman had forgotten to unload) went off by mistake. The discharge missed Weinberger but struck Watt, who, dressed in a dog suit, was walking home on a nearby sidewalk after attending a costume party. Watt, who suffered only a minor flesh wound, nonetheless ran howling with pain into the street where he collided with Nancy who was returning home on her bicycle after studying all evening at the Law Library. Nancy fell off her bicycle as a result of the collision, broke her neck, and died.

You have just been elected (congratulations!) the Prosecutor in the State of McCauley, the jurisdiction in which all of these events transpired. What criminal charges, if any, can arguably be brought against any or all of the actors involved in this incident? What are the likely defenses which will be offered to those charges? Who is likely to win? Why?

II.

Ralph Hall and Richard Hagen and the deceased, Robert Phillips, were inmates at the McCauley State Prison. On November 1, 1977, Hall, a member of a prison gang called "Bad Company," was standing outside the door of a prison dormitory watching what was happening inside. Inside the dormitory, Hagen, also a member of "Bad Company," struck Phillips twice in the back of the head with an eight-pound pipe used as a bar on a weight lifting machine. Phillips was a member of a rival gang, the "Prison Lords." Both gangs had repeatedly threatened to kill members of the other gang. Phillips had apparently initiated this particular incident by jumping at Hagen from behind a half-open cell door; he had punched Hagen in the stomach with a pair of "brass knuckles" on his fist

and then he had run away. Hagen struck back with the pipe, hitting Phillips just as he bolted for the door.

After hitting Phillips, Hagen walked to the door and, without speaking, handed the pipe to Hall. Hall took the pipe to the weight area where he wiped it off with a red handkerchief and placed it on the weight machine. When Phillips was found, he was taken to Maricopa County Hospital. He was comatose and unresponsive to all but "deep pain" stimuli, such as pressure applied to the breast bone. An examination revealed a large scalp laceration, a fractured skull and three fractured fingers. All neurological signs indicated brain damage.

Phillips was confined to the Intensive Care Unit for about ten days, where he remained unconscious and unresponsive to any stimuli less than deep pain. On the eighth day, he regained consciousness and began to move his limbs. He also began to verbalize, but nothing he said was intelligible. Later Phillips was transferred out of the Intensive Care Unit, and near the end of two weeks he could move about, but only when assisted by someone else. His ability to communicate or to move about was never normal and he was never considered fully recovered, even though he had made some progress toward recovery.

On November 28, Phillips was found dead on the floor of his hospital room. An autopsy disclosed he had died from a large pulmonary embolism, a blood clot, that blocked both arteries into his lungs. The embolism's source was thrombosis in his right femoral vein located in the right groin area. Seemingly the clot broke off the vein's wall, traveled through the vein to the heart and then to the arteries of the lung.

You are the Public Defender in Patrick County, State of McCauley, the jurisdiction where the incident described above took place. Hall and Hagen have both been charged with first degree murder and conspiracy to murder in the death of Robert Phillips. What defenses do you arguably have with respect to these charges? Will they succeed? Why or why not?

[Facts are taken in part from State v. Hall, 633 P.2d 398 (Ariz. 1981).]

III.

Groucho observes Harpo, his roommate, being assaulted by Zeppo at gunpoint.

- (a) If Groucho does nothing in response to the assault on Harpo except applaud, has he committed a criminal act? If he has, what crime is it? If it is not a crime, why not?

(b) Without regard to how you answered (a), do you think Groucho's failure to assist Harpo should be subject to criminal sanctions, i.e. why is it appropriate or inappropriate to criminally punish such conduct?

Professor Burkoff

Judge Parker

