

CRIMINAL LAW
SECTION B3

Mid-Term Examination
December 16, 1982

Two & ½ Hours
2:00-4:30



*"Burglars, con men, and swindlers all over the place, and
I have to marry a lousy accessory after the fact."*

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.

Lee was married and had two children when he met Shirley Adams on January 8, 1972. He started to associate with her and saw her often over the next several weeks. On February 2nd, he forged a check for \$200 from the fraternal lodge of which he was the treasurer, giving Adams some of the proceeds. On that same date, Lee's wife, Clara, discovered Lee and Adams together in a tavern. Lee and his wife engaged in a heated argument about Lee's relationship with Adams which continued intermittently until February 4th.

Lee seems to have spent most of the afternoon of February 4th drinking in several taverns. He also took four prescription pills for relief from asthma. At approximately 5 p.m., he returned home and again argued with his wife. After a violent argument, Clara told Lee he had to leave home for good; Lee agreed to leave the house but only if his wife would give him his revolver so he could "get himself together." She agreed to give it to him but (unbeknownst to him) emptied all of the bullets out of the gun's firing chambers.

Lee took the gun and resumed drinking at several bars. At about 9:45 p.m., he went to the Flamingo Tavern where he encountered Shirley Adams. They quarreled violently when Lee told her he wanted to move in with her, and she left the bar with Lee following her. Their argument continued outside until she dared him to shoot her. Lee tried to do just that but, of course, there were no bullets in his gun. In frustration, he threw the gun at Adams. It missed her when thrown but struck the wall of the tavern, rebounded, and hit her squarely in the eye on the rebound. Blinded with pain, she fell to the ground and hit her head on a fire hydrant, killing her instantly. The coroner ruled that due to a weakness in Adams' skull, any sharp blow to the head might have killed her at any time.

You have been elected (congratulations!) the Prosecutor in Examination County, State of Pain, the jurisdiction in which all of these events took place. What charges, if any, can you conceivably bring against anyone as a result of these events? What defenses do you anticipate will be raised by defense counsel in response to these charges? What are your chances of conviction? Why?

[Cf. State v. Lee, 321 N.W.2d 108 (Wis. 1982)]

→
 → Int. Div.
 → President
 → District
 → Problem

II.

*Conspirin.
+ Attempt.*

David, Linda, and Tammy were vacationing in Jamaica when David suggested to Linda and Tammy that they smuggle some cocaine that he would provide back into the United States on their return flight. David remarked: "Even if the feds catch you, it's no big deal. I'm a lawyer, I know. They don't prosecute the carriers. They go after the big guys. And if they don't catch you, it's worth \$20,000 to each of you to bring me the coke in New York." Linda adamantly refused to go along with the plan, but Tammy agreed.

Two days later, Linda and Tammy returned together on a flight to New York City. Tammy carried a large quantity of cocaine hidden in interior pockets sewn into her clothing. However, on arriving at the airport, Tammy balked when she approached the Customs desk and she whispered to Linda: "I can't do it. No loyal American would smuggle drugs into this fine country of ours. Even if they won't prosecute me, I can't do it. I'm going to flush this coke down the toilet." Linda responded: "Don't be a fool! Can't you ever finish anything you start? Are you sure you want to flush away \$20,000? What will David think?" At that, Linda decided the only honorable thing to do was to call David, who had returned the day before to New York, on the pay phone in the Customs area to tell him she might not deliver the cocaine after all. When David heard this, however, he threatened to "break every bone in your [expletive deleted] body" and to kill Tammy's dog if she didn't bring him the cocaine. Still uncertain what to do but a bit more troubled than before, Tammy got back in the Customs line but was stopped 10 seconds later by Customs agents before she even got to the Customs desk because her conversations with David and Linda had been overheard. The "cocaine" Tammy was carrying was found and seized. Ironically, however, it turned out not to be cocaine at all but Ivory Snow laundry detergent. David had simply wanted to see if Tammy had the "courage" to smuggle drugs into New York.

Tammy and Linda were arrested and charged in federal court with conspiracy to possess with intent to distribute cocaine and attempted possession with intent to distribute cocaine. Unfortunately for Tammy and Linda, they have no money left after their stay in Jamaica, and they got assigned you to represent them. What arguable defenses do Tammy and Linda have to these charges? Are you likely to be successful with these defenses? Why or why not?

*Abandon**Tammy**David's**Legal Impass.*

III.

One commentator has argued:

"While it is generally correct to state that the criminal defendant is under no obligation to produce evidence, the legislature may constitutionally allocate to the defense a burden of production and even a burden of persuasion with respect to certain so-called defenses and true affirmative defenses."

Graham, "Allocating the Burdens of Proof," 17 Crim. Law Bull. 334, 343 (1981).

- 1) Is this statement correct? Why or why not?
- 2) May a legislature require a criminal defendant to prove by a preponderance of the evidence: a) a mitigating defense of provocation; b) a complete defense of intoxication, and c) a complete defense of mistake of law? Why or why not?
- 3) Assuming the quoted statement above is correct, is it fair to allow legislatures to shift the burden of proof to criminal defendants like this? Why or why not?



Professor Burkoff