

EXAM NO. _____

CRIMINAL LAW
SECTION A1

Final Examination
December 16, 1987

Three Hours
2:00-5:00

THIS EXAMINATION MUST BE RETURNED WITH YOUR BLUEBOOKS



"Your Honor, the jury finds the defendant, Willis Rairdner, guilty as charged and, in the spirit of the season, wishes everyone in the courtroom a happy holiday."

OPEN BOOK

Instructions

The three problems are of equal weight in grading. 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.

1987

I. (60 minutes)

Consider the following facts:

On July 25, 1985, defendant [Norman Baker] and his fiancée had been visiting friends near Mt. Hood. He had had several drinks before the two left for home from Timberline Lodge on defendant's motorcycle. As they approached a stop sign near Boring, defendant turned his head to talk to the victim; when he turned back, it was too late for him to avoid striking a motorcycle and colliding with a car in the intersection. The victim was thrown from the motorcycle and sustained severe head injuries.

She was hospitalized until September 18, 1985, when she was transferred to a nursing home. Although she was still comatose and had a tracheostomy tube in her throat for breathing, she had begun to improve. Her eyes could follow people in her room, and she responded to pain and even hummed to a tune on the radio. On July 26, 1986, someone removed the tracheostomy tube, and on the next day she died. No autopsy was performed.

At trial, Dr. Willeford, the house physician, testified that he had ordered the tube removed and that its removal was in no way associated with the victim's death; in his opinion, death was caused by the head injury. Dr. Misko, who had treated the victim at Emanuel Hospital, testified that in his opinion her "sudden death" after the removal of the tracheostomy tube was not consistent with death by brain injury and that, without the tube, she had died of respiratory obstruction. Nurse Sadoff testified that, on July 26, 1986, at 4:10 a.m., the victim was lying on her side. When Sadoff looked in on her minutes later, she was a dusky color, without any vital signs, and she was dead.

Cf. State v. Baker, 742 P.2d 633 (Or. Ct. App. 1987).

Due to events beyond your control, you now find yourself (a) in Boring, Oregon, and (b) a prosecutor. Two questions:

(1) Can you successfully prosecute Baker for homicide? Explain why or why not.

(2) Can you successfully prosecute Dr. Willeford for homicide? Explain why or why not.

II. (60 minutes)

LuAnn and Barb are recent law school graduates who decided to go out and celebrate after each received a notice from the State Board of Law Examiners stating that each had passed the Bar Exam. LuAnn showed up at Barb's house to pick her up in what looked to be a brand new, hot pink Rolls-Royce automobile. Barb was delighted and amazed and asked LuAnn where she had gotten the Rolls-Royce since, even though starting lawyer salaries have been going up, this seemed like a bit much. LuAnn responded that her friend, Carolyn, had hot-wired and taken the car from in front of her neighbor, Karen's, house and "loaned" it to LuAnn and that: "Karen will never miss it. She's an airline pilot and she told me this morning that she was flying an evening flight to San Francisco."

Unfortunately for LuAnn and Barb, LuAnn had taken the wrong car. The car she took was Darren's--not Karen's--car. Darren returned home from work, saw the Rolls was missing and notified the police.

Officer Michele found, stopped, and arrested LuAnn and Barb while they were returning home from their revels, LuAnn driving and Barb in the passenger seat. They were both taken to the station house. When Darren was called to come down to the police station to identify his car, he informed the police, however, that while the car was his to use, in fact, the title was in Barb's name (although she didn't know it). Barb was Darren's girlfriend and Darren had just purchased the Rolls to give to her as the traditional gift for passing the Bar.

All of the foregoing events took place in the State of Hubris. You have been appointed defense counsel for LuAnn and Barb, who have been charged with attempted possession of stolen property (Hubris Crimes Code § 5213(a)(1)(i)), conspiracy to possess stolen property (Hubris Crimes Code § 3), and possession of stolen property (Hubris Crimes Code § 9056.2-5(b)(3)). Discuss the likelihood of your successful defense on these charges.

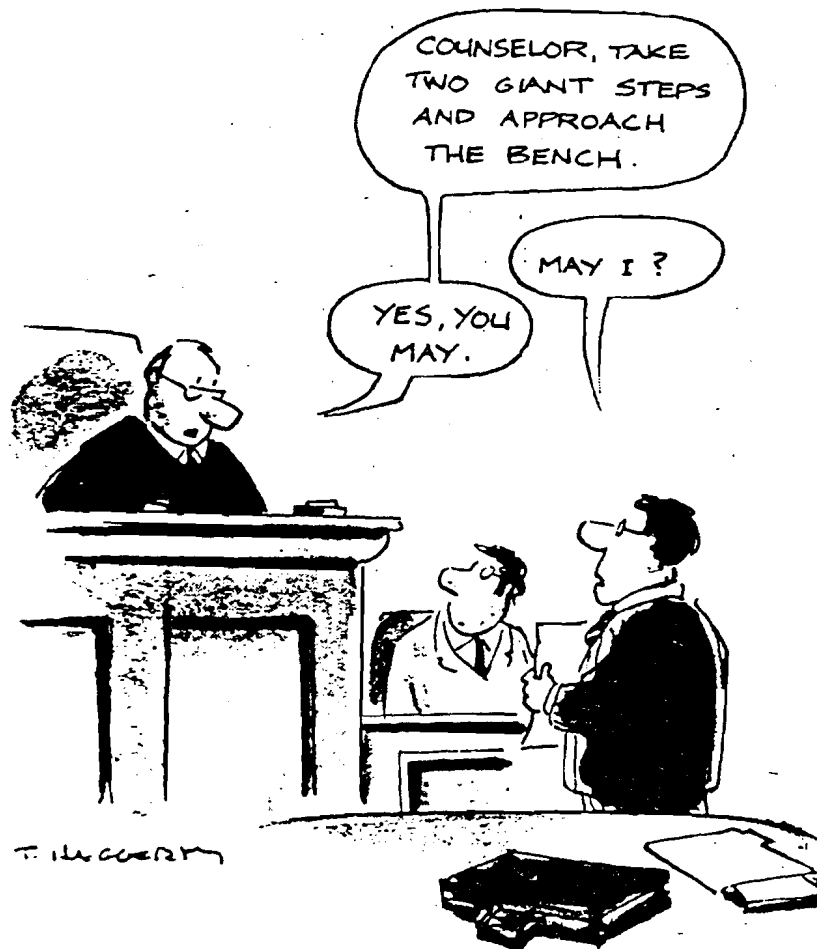
III. (60 minutes)

Kenny Khaddafi, having taken LSD, drunk a pitcher of Bloody Marys, and eaten a bag of onion rolls for lunch, entered Ma and Pa's Fruit and Vegetable Store and stood in the back, unobtrusively squeezing the melons. As soon as all of the other customers left the store, Khaddafi walked over to the cash register, pointed a toy gun at Pa, who was standing behind the counter, and demanded that Pa hand over all of the money in the register. Pa gave Khaddafi no money because he saw that Khaddafi had a toy gun and knew he posed no threat.

Meanwhile, observing Khaddafi take out his gun from across the store and not realizing that it was a toy, Ma used her training in the Marines and reflexively reacted by throwing a head of cabbage at Khaddafi's head. The cabbage struck Khaddafi right between the eyes and caused him to stumble backwards into a huge display of crates of avocados. The crates fell, the avocados tumbled out, striking, covering, and smothering Pa to death.

The foregoing facts took place in New Jersey. Khaddafi has been charged with felony murder and attempted armed robbery. Khaddafi claims that he is not from New Jersey (he was just visiting family for the holidays) and that he did not know that armed robbery was a crime. He has submitted a lie detector test which shows that he is telling the truth.

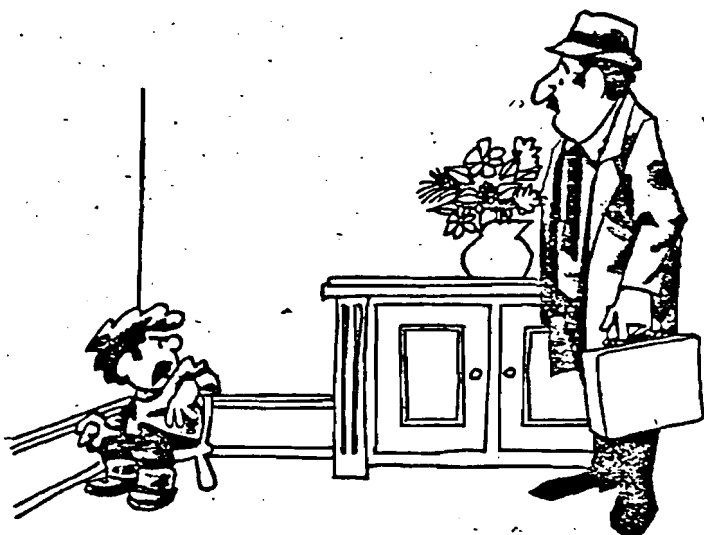
Discuss the likelihood of success of both of these charges.



Professor Burkoff

- (1) The State of Irritation already has statutes in its Crimes Code criminalizing the crime of assault. Would it be proper for an Irritation trial judge to sentence a defendant consecutively, for assault and for ethnic intimidation, both offenses arising from the same fact situation? Why or why not.
- (2) Under this statutory scheme, can the Commonwealth place the burden of proof on defendant in making a defense under § 299.9(B)(3)(iv)? Why or why not?
- (3) Do you think the crime of ethnic intimidation, is a penologically desirable offense? Why or why not?

Professor Burkoff



"I always thought the burden of proof was on the prosecution."