

CRIMINAL LAW
Section BFinal Examination
December 9, 1991Two and 1/2 Hours
1:00-3:30THIS EXAMINATION MUST BE RETURNED WITH YOUR BLUEBOOKS

"No, ma'am, I'm afraid we can't shoot them all just to be on the safe side."

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.

I.

Consider the following set of facts:

"At approximately 9:30 p.m. on June 17, 1988, Maggie Hughes stopped at a Houston Texaco gas station to buy a cold drink. She left her six-year-old daughter, Danielle, and her infant daughter, Kanditz, in her car while she went in the station. As she was making her purchase, she saw [a man later identified as Donald Mackey] jump into her car and drive away. Danielle jumped out of the car when it slowed down. Mackey testified that he did not realize that a baby was in the front seat until about thirty minutes later when he was across town from the Texaco station. He stopped the car, removed the infant seat holding the baby, and placed it about three feet from the side of the road.

"After he removed the baby, he knocked on the side of a nearby house and ran back to the car. An elderly woman, Hilda Krone, looked out of the window of the house and yelled at Maggie to get out of there and to take his baby with him. Mackey drove off and went to his brother's house and gave his sister-in-law bags of baby items that he had found in the car.

"A City of Houston employee discovered the baby right where Mackey had left her on the side of the road the following day. She had died from exposure and dehydration."

Cf. Mackey v. State, 811 S.W.2d 643 (Tex. Ct. App. 1991).

Drawn by the fact that you can wear fancy boots and a funny hat to work every day, you have left the Golden Triangle and joined the District Attorney's Office in Houston, Texas. Your supervisor in that office, Tex Burkoff, asks: Can you successfully prosecute Donald Mackey and/or Hilda Krone for homicide? Can you? Explain why or why not.

II.

On the evening of December 21, 1991, Juliet, a first-year student at Spitt Law School, located in the Spokland section of Spittsburgh, Spennsylvania, was sitting alone in her apartment, dejected and depressed because law school classes were over for the semester and she would not experience the thrill of socratic dialogue again, at least for another three weeks. Juliet began drinking heavily and after two hours and half a bottle of whiskey, she passed out. Four hours later, at 3:00 a.m., Juliet thought she heard a noise outside her front door which sounded to her like someone was trying to break in. Juliet staggered off the couch where she had been "dozing," got a kitchen knife from her kitchen drawer, and approached the front door.

"Who's there?" she yelled through the door at the top of her lungs; no one answered. "Who's there?" she yelled again. This time her next door neighbor, Romeo, who had come out into the hall with only a towel on (he had just stepped out of the shower) to see what all the commotion was, responded: "Nobody's out here. Go back to bed." Juliet thought Romeo yelled: "There's no body out here. Got shot in the head." Juliet flung open the door, and saw Romeo standing in the hallway looking at her with an odd look on his face. Romeo started toward Juliet to ask what in the world was going on, but Juliet, startled at Romeo's movement towards her and his lack of clothing, and assuming he was up to no good as he did not appear to have a head wound even though he said (she thought) that he had been shot in the head, threw the kitchen knife at him. The knife neatly sliced off Romeo's right ear.

Appalled at what she had done, Juliet immediately called an ambulance. Before the ambulance arrived, however, she asked Romeo not to tell the police what really happened because she did not want this episode to go on her permanent record. Romeo said he would tell no one and, true to his word, told the police that he accidentally cut off his ear with a kitchen knife while he was walking in the hall at 3:00 a.m. dressed only in a bath towel. (The police did not believe this story, but they waited to laugh until they got back to the station house.)

Juliet has been charged with assault with a deadly weapon, attempted murder, and conspiracy to obstruct justice (by trying to cover up what she had done). Romeo has also been charged with conspiracy to obstruct justice and indecent exposure (as Romeo fell to the ground, wounded by the knife, his towel fell off). You are an Assistant Public Defender for Spallegheny County (the county where Spittsburgh is located). You have been appointed to defend both Juliet and Romeo against these charges. What chance of success do you have? Why?

III.

You have been hired as a legislative assistant to a state legislator in the state of Bliss. Your boss tells you that she is considering introducing two amendments to the Bliss Crimes Code and she wants your opinion on the impact of such amendments on the Crimes Code, their likely constitutionality, and their desirability as reform legislation.

The two amendments are:

- (1) A statute eliminating all criminal negligence offenses, i.e., recklessness would be the "lowest" mental intention sufficing to establish criminal culpability; and
- (2) A statute eliminating the defense of mistake, whether mistake of fact or mistake of law.

What is your opinion?

Professor Burkoff



"The witness will answer counsel's questions and refrain from forearm bashes . . ."