

Monterey College of Law - Hybrid

Criminal Law – Section 1

Fall 2024

Prof. C. White

Instructions:

Answer two (2) Essay Questions.

Answer 24 Multiple-Choice Questions in Exemplify. To select the answer you believe is correct, click on that answer. Use the 'Next' and 'Previous' buttons to navigate between questions. Read each question carefully and choose the best answer. Review your answers for accuracy before you finish.

Total Time Allotted: Three (3) Hours

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### Question 1

Aaron is a local accountant who runs a small but very successful accounting practice with his business partner, Barry. Over the last several years, the stress of work and life has caused Aaron to start using alcohol as a coping mechanism.

In the last few months, Aaron's substance-abuse issues have started to impact his performance at work. Aaron has been showing up late, has been missing deadlines, and producing shoddy work. Several clients and staff members have commented to Barry that they feel Aaron has been intoxicated during meetings.

In response, Barry reminds Aaron that their partnership agreement has a contingency that allows one partner to terminate the partnership and take over the entire book of business of one of them develops issues in their personal lives that impact the firm's business. Barry threatens to sever the partnership and keep all of the clients if Aaron does not get sober.

Aaron's wife, Wilma, has also threatened to leave him and take their children unless he gets sober. Aaron knows Wilma is serious and vows to get back on track.

One day, Aaron shows up to work extremely "hung over" and performs very poorly during an important meeting with a major client. As a result, the firm loses the client's business. Immediately following the meeting Barry pulls Aaron into his office and tells him that he will be seeking to sever their partnership, effective immediately. Barry has a security guard escort Aaron out of the building and Aaron is humiliated.

Distraught, Aaron stops at a bar and orders several drinks before driving home. As soon as Aaron stumbles in the front door, he tells Wilma that Barry terminated their business relationship. Wilma then smells alcohol on Barry's breath and tells Aaron that she is leaving him and taking the children. Wilma tells Aaron that he has been a terrible father and husband for choosing alcohol over her and their children. Wilma tells Aaron that she is leaving him and that he will never see his children again. She promptly speeds off and refuses to answer his many calls. Several hours pass and Aaron is growing increasingly devastated by Wilma's words and actions.

Aaron then becomes convinced that Barry is to blame for all of this and he decides to drive to the office and confront Barry. When Aaron arrives at the office, he sees that Barry's car is not there. Aaron then remembers that Barry was scheduled to work from home in the afternoon. Aaron then drives to Barry's house, rushes inside and confronts Barry. Still fuming from losing a major client, Barry responds by telling Aaron, "you blew it and I am not taking you back as a partner." Aaron then rushes to his car and loads a pistol that he keeps in a locked box in his trunk. He then re-enters the house and shoots Barry, emptying the gun and killing him immediately.

- Is Aaron guilty of Murder? If so, what theory or theories of murder is Aaron guilty of?
- What defenses to murder, if any, does Aaron have.

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## Question 2

Bonnie is small-time criminal who is looking to increase her status within the local criminal community. One snowy night Bonnie is out at a local dive bar known for its criminal clientele when she meets Clyde, a bank robber with a string of successful armed bank-robberies under his belt.

The two talk and Clyde tells Bonnie that he is looking for a partner for his next big heist. Bonnie expresses interest in helping with the heist and Clyde says that Bonnie can participate as a “get away” driver. Bonnie tells Clyde that she is very interested in participating but she does not have a car. Clyde responds “that won’t be a problem, I’ll take care of everything.”

Over the next week, Bonnie and Clyde plan the details of the bank robbery. Unbeknownst to Bonnie, Clyde steals a van for Bonnie to drive.

On the day of the robbery, Clyde picks Bonnie up in the van and she gets into the driver’s seat. The two drive over to the bank but as Bonnie drives by the front of the bank, the two notice there are more customers than they had originally anticipated. Clyde turns to Bonnie and says, “Looks like we have a lot of potential witnesses, I’ll have to ‘play it by ear’ once I get inside. You need to be ready for anything though cause I don’t like changing my plans.” Bonnie replies that she will be ready and waiting.

As Clyde rushes into the bank, he slips on some ice that has formed on the door jam and falls to the ground. As Clyde hits the ground, the loaded revolver he has been carrying in his pocket tumbles out onto the floor of the lobby. Clyde nervously stands up and says “Sorry! I wasn’t going to do anything!” Clyde then runs out of the bank and back to the van.

Bonnie speeds away from the scene, disappointed they did not pull off the robbery.

The police quickly identify Bonnie and Clyde as the suspects and the two are arrested.

**Assume Bonnie and Clyde are in a jurisdiction that requires the principle to be found guilty of a crime before an accomplice can be convicted.**

- 1) Is Clyde guilty of attempted robbery? Why or why not?
- 2) Assuming Clyde is convicted of attempted robbery, what crimes, if any, is Bonnie potentially guilty of? Discuss all legal theories of liability for Bonnie.

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### **ANSWER OUTLINE**

#### **QUESTION 1**

##### **First Degree Murder:**

- Willful, deliberate, and premeditated:
  - Aaron was angry at Barry when he went over to Barry's house
  - Aaron got the gun from locked box.
  - Aaron loaded gun and re-entered the house to kill.

##### **Second Degree Murder:**

- Intent to kill (express malice):
  - Aaron was mad, used a gun, and shot Barry until he was dead.
- Intent to cause great bodily injury (implied malice):
  - Even if Aaron did not intend to kill, he clearly intended to cause Barry serious physical harm.

##### **Defenses to Murder:**

- Voluntary Manslaughter (heat of passion):
  - Heat of Passion Elements
  - Was Barry the source of Aaron's emotional distress or was it Wilma?
  - Was Aaron's response to Aaron's comment reasonable—would it have inflamed the passions of a reasonable person such that the killing was mitigated?
- Voluntary Intoxication:
  - Aaron had been drinking and was known to have alcohol issues.
  - Aaron "stumbled" into his own home.
  - Wilma felt Aaron was likely drunk.
  - BUT:
    - Aaron drove to his former office.
    - Aaron remembered Barry was working from home.
    - Aaron drove to Barry's house.
    - Aaron remembered his gun, unlocked box, loaded it and used it.

## Question 2

### **Is Clyde guilty of attempted robbery? Why or why not?:**

- Did Clyde specifically intend to rob the bank when he entered it?
  - Comments to Bonnie in the car—was he just scoping things out?
  - Significant planning.
  - Brought a gun.
- Did Clyde abandon his plan to rob the bank before he took a substantial step toward committing the bank robbery?
  - Did entering the bank with a gun constitute a substantial step?
    - Did entering the bank with a gun manifest an unequivocal intent to commit the robbery?
    - Was there time and opportunity for him to NOT rob the bank?
    - Was his decision to abort the robbery volitional or did he get caught?

### **What other crimes, if any, is Bonnie potentially guilty of?**

- Conspiracy to commit robbery.
  - Agreement + act in furtherance of the crime.
- Attempted robbery as a accomplice.
  - Did Bonnie act as an accomplice?
    - Did she know Clyde was going to rob the bank?
    - Did she provide material assistance, aid, encouragement, etc?
    - Did Bonnie provide assistance with intent that Clyde would carry out robber?
- Car theft as a coconspirator:
- Attempted robbery as a coconspirator
  - “Natural and probable consequences doctrine” of accomplice liability.
  - Car theft under the Pinkerton Doctrine (liability for other crimes in furtherance of conspiracy, within the scope of the conspiracy, foreseeable as a result of the conspiracy).
- Bonus consideration for Burglary—entering into building with intent to commit felony.

1)

Aaron=A

Barry=B

because=b/c

Voluntary manslaughter=VMS

**Is Aron Guilty of Murder? If so What theories of Murder is Aaron Guilty of?**

Murder is the unlawful killing of another with malice *aforethought*.

**Common law murder**

✓ At common law murder was defined as the unlawful killing of another with malice aforethought. Malice aforethought can be satisfied by any of the following 4 situations: intent to kill, intent to cause serious bodily harm, reckless disregard for human life, felony murder. Intent to kill is considered express malice while the other 3 are considered implied malice.

**Did A act with the intent to kill?**

In the present case it would appear that A acted with the intent to kill b/c following B telling A that he could not get his job back, A went to his car-unlocked his gun, loaded it and returned to the house where he proceeded to discharge all or the bullets into B prior to stopping.

Since A shot B with the apparent intent to kill and B died, A is guilty of murder under the common law definition.

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### Is A guilty under the theory of felony murder?

Felony murder is the killing of another while in the process of committing a felony. If the felony is an enumerated felony (BARRK) then it constitutes 1st degree murder. If the felony is not an enumerated felony then it constitutes 2nd degree murder. The felony may not be in furtherance of the killing.

Here A is not guilty under the felony murder theory as the crime of discharging a firearm and aggravated battery were done with the intent to kill B and thus were in furtherance of the killing.

*Didn't A commit a residential burglary?*  
*Re-entered B's house w/ intent to commit a felony (assault or murder)*  
**Is A guilty of 1st degree or second degree murder?** *therein.*

Modern law defines 1st degree murder as one that was either deliberate and premeditated or a killing that occurred during the commission of an enumerated felony. See above. A murder is premeditated if the actor killed having coolly reflected on the killing and deciding to proceed. A specific amount of time is not necessary for premeditation but may be indicative that the actor did have time for cool reflection. All other murder is considered to be of the 2nd degree.

The felony murder theory does not apply here. See above.

A will argue that his killing of B was not premeditated and that he only went to B's house to confront him not to shoot him. As evidence A will point to the fact that he did not enter B's house with the gun but left it unloaded in a locked box in his car. However, prosecution will argue that A left his house with the intent to kill B b/c he went looking for B with a gun and bullets in his car and persisted in looking for him when he did not find him at work. While this is not entirely convincing prosecution may further argue that if he had not decided to kill B until B refused to reinstate him, then leaving to get his gun from his car, unlocking the gun, loading it, going back inside, and unloading a clip into B



shows a clearly thought out plan to kill that A had time to consider while he was getting his gun and loading it. *great analysis*

If the jury believes the prosecution that these steps show premeditation on A's part then he will be guilty of 1st degree murder. IF the jury does not find that the time it took for A to retrieve his gun provided time for cool reflection then A is guilty of 2nd degree murder.

**What defenses to murder does Aaron have?**

**Was A reasonably provoked to kill B, thus mitigating his murder of B to VMS?**

A will argue that B refusing to give A his job back constituted reasonable provocation to mitigate his murder of B to VMS. VMS is the killing of another with malice that is justified by either reasonable provocation or the imperfect defense of self or others. In order to mitigate murder to VMS under the reasonable provocation theory, one must show that their victim created a situation that would cause a reasonable person to become so enflamed and full of emotion as to render them unable to think or control themselves, and that the subsequent killing was a reaction to the provocation and thus unintentional. The actor must also show that they were so enflamed, and that there was neither adequate time for them to cool off or for the reasonable person to cool off.

This defense will fail for more than 1 reason. 1st the reasonable person would not be so enflamed by a refusal to give them their job back following a justified firing that they shot killed another person. 2nd even if a reasonable person did get so enflamed, A's subsequent actions did not indicate an instantaneous reaction to B's refusal but instead a series of calculated steps that showed an intention to kill (e.g. leaving to retrieve and load the gun and returning). The time it took to retrieve the gun should have provided adequate time for A to cool off and consider his actions.

A will likely fail in his attempt to mitigate a murder charge to VMS.

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**Did A lack the mental capacity to form intent due to his prior intoxication?**

A will likely argue that his prior intoxication made it so that he lacked the capacity to form the necessary mens rea required for murder. For intoxication to be a viable defense, the actor must be so intoxicated that they are unable to ~~make meaningful decisions~~.

*form intent required by crime*  
This defense will fail A because it had been several hours since he had gotten drunk and there is nothing to indicate that he kept drinking after he left the bar. Further, A decided to go find and confront B. This takes the ability to think and comprehend how to go about finding a person. Additionally, when A did not find B at work he was able to remember that B was working from home, and how to get there and decided to continue in his attempt to find and confront B instead of calling it off. Finally, when B told A he could not have his job back, A did not merely lunge at B to attack him with his fists as a highly intoxicated person might, instead he went to his car, unlocked his gun, loaded it, returned to the house and emptied the clip into B. Each of these steps took the capacity to make decisions and provided evidence to bolster the prosecution's assertion that A was not so intoxicated that he was unable to form the intent to kill B.

A will not be successful in using an intoxication defense to murdering B.

**Conclusion**

A is guilty of either 1st or second degree murder depending on how the jury rules on evidence of premeditation.

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2)

Bonnie=B

Clyde=C

because=b/c

between=btw

**1) Is Clyde guilty of attempted robbery?**

Clyde is guilty of Attempted robbery. To be guilty of attempt, one must have the specific intent to commit the target crime and take a substantial step in furtherance of that crime. Mere preparation is not a substantial step. The actor must come very close to completion of the target crime. An actor is not guilty of attempt if they unequivocally and voluntarily abandon the plan to carry out the crime. Abandonment may not be based on unfavorable conditions or postponement to a later date or different target. Once a substantial step has been taken in furtherance of the crime, attempt is complete and the actor may not claim that they abandoned the attempt. ✓ *great rule stmt*

Here B and C had planned the bank robbery out for a week, they went to the bank with the intent to carry out the crime, and C only desisted from carrying out the crime when he fell on the ground while entering the bank and his gun fell out on the floor, thus ruining the element of surprise that would increase the likelihood that the crime would be successful. Entering a building with a weapon and the intent to carry out a robbery but only stopping when it became less likely that the crime would be successful. C will argue that he is not guilty of attempt b/c he abandoned the crime when he got up off the floor of the bank apologized and left. This argument will fail however because he had already taken 2 substantial steps toward the commission of the bank robbery--driving to the bank with B with the intent to rob it and entering the bank with a gun intending to rob it. ✓

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Further the only reason that C attempted to abandon the plan was because he fell and his gun spilled out on the floor ruining the element of surprise, not because he felt remorse or second thoughts

C is Guilty of attempted robbery.

**2) Assuming Clyde is Convicted of attempted robbery, What crimes if any is Bonnie Potentially guilty of?**

**Is B guilty of Conspiracy to commit bank robbery?**

B is guilty of conspiracy to commit bank robbery. To be guilty of conspiracy an actor must have intentionally entered into an agreement with 1 or more other participants to commit a crime or series of crime with the intent of committing those crime, and at least 1 member of the agreement doing an overt act in furtherance of the target crime. The overt act need not be a crime, but it must be more than planning. California is a bilateral conspiracy jurisdiction, which means that at least 2 people must intent to commit the crime(s) considered. In a unilateral conspiracy jurisdiction only 1 party is required to intend to commit the crime while the other member could be a cop or an informant who actually intends that the target crime is not achieved.

Bonnie was part of a conspiracy to commit bank robbery under either the unilateral or bilateral definition of conspiracy b/c she intentionally agreed with C to commit bank robbery with the intent for the bank robbery to be carried out and C had the same intentions. B's intent to enter into the agreement is shown by her expressed interest in the heist as well as telling C that " she was very interested but did not have a car." The 1st overt act in furtherance of this agreement was when C stole a getaway car to use in for the robbery.

B is guilty of conspiracy to commit bank robbery.



**IS B guilty of stealing the get away car?**

B guilty of stealing the get away car. Under the Pinkerton Doctrine of co-conspirator liability, 1 member of a conspiracy is liable for the crimes of another member of the conspiracy if the crime was reasonably foreseeable and the crime was done in furtherance of the target crime.

Here C stole a getaway car to use in the bank robbery. This theft was reasonably foreseeable since B told C that she did not have a car to use as a getaway driver and C told her "that won't be a problem, I'll take care of everything." This can be reasonably taken to mean that C will get a car will steal a car as it is common sense not to use your own car as the getaway vehicle. The theft was also in furtherance of the intended bank robbery as it was stolen to be used as a getaway vehicle.

B is guilty of stealing the getaway car under co-conspirator liability.

**Is B Guilty of attempted bank robbery under co-conspirator liability?**

B is guilty of attempted bank robbery under coconspirator liability. Under the Pinkerton Doctrine of co-conspirator liability, 1 member of a conspiracy is liable for the crimes of another member of the conspiracy if the crime was reasonably foreseeable and the crime was done in furtherance of the target crime.

Here C attempted to commit the target crime of C and B's conspiracy. If a conspiracy is to commit a certain crime and 1 member attempts to commit that crime then the attempt was reasonably foreseeable b/c it was the crime contemplated. An attempt to commit a target crime is also done in furtherance of the target crime b/c if it were successful the crime would be accomplished.

B is guilty of attempted bank robbery under co-conspirator liability

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**Is B guilty of attempted robbery under accomplice liability?**

B is guilty of attempted robbery under accomplice liability. A person is guilty of the crimes of another under accomplice liability if they intentionally aided or encouraged in the preparation or commission of a crime with the intent that the crime be committed. The present jurisdiction further requires that the principal be found guilty of the aforementioned crime before an accomplice can be convicted of the same crime.

Here B intentionally provided C with aid in his attempt to commit bank robbery b/c she agreed to be the getaway driver and she helped C to plan the heist. B also intended for the bank robbery to be successful as evidenced by her stated disappointment that C failed to carry out the crime. Further as C was convicted attempted robbery B can be convicted.

B is guilty of attempted robbery under accomplice liability.

**END OF EXAM**