

Monterey College of Law
Criminal Law & Procedure – Section 2 (Hybrid)
Midterm Examination
Fall 2024
Prof. K. Smith

Instructions:

Answer two (2) Essay Questions.

Answer twenty (20) MBE Questions.

Total Time Allotted: Three (3) hours.

Recommended Allocation of Time: One (1) hour per section.

Complete sentences are required. Clearly identify which party you are discussing in your answers.

Please recite the applicable law from the previously reviewed CALCRIM instructions. DO NOT cite to the CA Penal Code, the Model Penal Code, or to federal law.

Conclusions MUST be definitive. No “on one hand” answers for your conclusions.

Headings for each section are STRONGLY encouraged for grading purposes.

Numbering the elements of the rule(s) is STRONGLY recommended for grading purposes.

QUESTION 1

Daniel and David are hanging out one night at Daniel's house. During the night, they both begin discussing how they need to buy Christmas presents for their respective partners. David jokes that they should find a black-market purveyor of high-end luxury bags on Facebook in order to save money.

To David's surprise, Daniel immediately agrees. Daniel and David begin discussing how they need to buy the bags quickly because Christmas is in two weeks. David gives his smart phone to Daniel. As Daniel is searching through Facebook, Daniel gets a gun from his vehicle and returns to the residence.

Once Daniel returns to the residence, he sees David holding several twenty-dollar bills and taking pictures of them. Daniel and David then discuss how to safely conduct a purchase of counterfeit luxury bags from a stranger on Facebook.

The buy is scheduled for later that night. A price is agreed upon for two separate Fendi bags. David and Daniel drive to a previously arranged site in a poorly lit alleyway. Upon arrival, David and Daniel meet up with Victor. Victor has a large black trash bag in his hand as well as his right hand in the front pocket of his hoodie. There is a visible lump inside of Victor's hoodie.

David attempts to hand Victor the previously agreed upon \$200 for the two bags. Victor states, "Nah, man. Heat's out tonight. For you, first-time buyer, make it \$250." Victor and David begin to argue, and both Daniel and Victor step in closer, their hands nearing their pockets and waistband.

Finally, David obtains an extra \$50 from his wallet and hands \$250 total to Victor. Victor laughs, taking the money, stating, "Thought so, you punk-ass. This for your girlfriend? Tell her to call me when she figures out she can have a real man in her life. I'll take care of her like she's never dreamed of." As Daniel and David back away slowly, both hear Victor laughing.

Several minutes later, as David is driving away, Daniel opens the bag. Inside are two cheap canvas duffle bags. When Daniel shows David the bags, David curses audibly. After driving back towards Daniel's house for five minutes, David asks Daniel, "You bring your gun?" Daniel nods yes. David turns the car around and drives back towards the location of the buy.

After searching for fifteen minutes, Daniel spies Victor standing near a convenient store a block ahead. David asks Daniel, "You ready?" Daniel says, "Let's go."

David parks around the block, and both walk towards the convenient store. When David and Daniel get within twenty feet, Daniel pulls his gun out from his pocket and holds it at his side. David yells out, "Hey! You screwed me!" Victor places his hand inside of his hoodie pocket. David looks at Daniel, saying, "Do it."

Daniel raises his weapon and fires his weapon twice at Victor. Victor attempts to run from the scene, with one bullet hitting the wall one foot above his head from where he was originally standing. The second bullet strikes Victor in the chest, killing him. Both David and Daniel flee the scene. Police are called, and a search of Victor's body reveals a cell phone in his hoodie pocket. No weapon is recovered from the scene. Through surveillance video and witness testimony, both David and Daniel are arrested the next day.

What crime(s) can David be charged with? Please specify the degree(s) of a crime, if applicable.

Please discuss any defenses David may argue.

QUESTION 2

Dylan has fallen on hard times. His rent money is due, and he is incredibly short this month. One night, at 1 a.m., after getting fast food, Dylan is driving through a neighborhood aimlessly since he doesn't work the next day. Dylan sees a single-family home with no interior or exterior lights on. A sign in the front lawn says, "Welcome to the Jones house!"

Dylan approaches the home after parking several streets away. No lights are on in the home; however, there is a car parked at the curb in front of the house. Dylan is dressed in dark clothing. Dylan approaches the house and enters the backyard. After making sure no one has awoken, Dylan attempts to open a sliding glass door to no avail. Dylan then sees that there is a window slightly open next to the sliding door. Dylan sees that there is a small rake in the backyard. Using the rake, Dylan inserts it through the window into the family room and uses it to unlock the sliding glass door, thereby opening the door. Dylan's hand or arm never enters the family room.

Upon entry, Dylan does not hear anything inside of the home. Dylan walks through the kitchen and into the living room, quietly grabbing items of value: silverware, an Alexa speaker, and a porcelain vase. Dylan then walks into the hallway where he sees two closed doors. Dylan opens one door and finds an unoccupied bedroom. Dylan quickly inspects the room, taking jewelry found in a dresser, a duffel bag, as well as a fur coat hanging in the closet.

Upon opening the second closed door, Dylan discovers that there is a human shape in the bed located against the wall. Dylan quietly closes the door and walks to the living room and exits the front door after unlocking it. Dylan begins walking back towards his vehicle with the items from the home inside of his duffel bag.

Dylan places the duffel bag into the trunk and slowly drives away from the residence. As Dylan gets to the exit from the neighborhood, he sees a man on a bicycle and a reflective vest that has "Neighborhood Watch" written on it. The man stops in front of Dylan's vehicle, blocking his path. The man says, "Halt! My name's Vernon and I'm with the neighborhood watch! What is your business here?" Dylan exits his vehicle with his finger in his pocket, simulating a firearm. Dylan states, "Stop right there or you're dead." Vernon stops, angrily looking at Dylan. Dylan says, "You got a phone on you? Empty your pockets!" Vernon slowly removes a cell phone from his pocket and places it on the ground. Vernon backs away to a distance of ~ 20 feet. Dylan bends down, picks up the phone, and gets into his car and leaves.

Once Dylan arrives home, he is thinking about Vernon attempting to stop him. The more he thinks about Vernon, the angrier he gets. After an hour, Dylan picks up the phone to call his friend, Walter. Once Walter answers the phone, Dylan states, "Man, I just finished a job. The goofy neighborhood watch guy tried to stop me. Punk. You gotta help me get him back." Walter says, "What do you mean?" Dylan states, "I need you to take care of him for me. He has to live in the neighborhood. I bet you can find him easily. Once you do, I'll split the proceeds from tonight with you." Walter agrees and hangs up the phone.

Walter never follows through with Dylan's request; however, Walter also does not go to law enforcement to report Dylan.

What crimes can Dylan be charged with? Please specify the degree(s) of a crime, if applicable.

Please also discuss any defenses Dylan may argue.

MULTIPLE CHOICE QUESTIONS

1) A federally licensed gun dealer was working at a gun show in State A. State A enacted a statute that made it a strict liability offense to sell any firearm or ammunition to anyone under the age of 21. The show held in State A was the biggest in the country, and the gun dealer hired an assistant to work for him during the show. The assistant told the gun dealer that they needed to move a lot of merchandise the first day of the show, because business slows as the show winds down. The morning of the first day of the show, a buyer, who was 20 years old, asked the assistant for a box of hollow-point bullets. The assistant asked for identification to verify the buyer's age. The buyer told the assistant that he had none, but he added, "Would that booth over there have sold me this if I wasn't of age?" The buyer then showed the assistant a brand new .357 Magnum. The assistant looked to the gun dealer for guidance, and the gun dealer nodded his approval. The assistant sold the buyer the bullets, and both the gun dealer and the assistant were subsequently arrested for selling ammunition to an underage person.

Is the assistant guilty of the offense?

- (A) No, because the assistant reasonably believed that the buyer was of age.
- (B) No, because the assistant was under duress from the gun dealer to make the sale.
- (C) Yes, because the buyer was underage.
- (D) Yes, because the assistant intentionally sold ammunition to someone who was under the age of 21.

2) The personal digital assistant (PDA) that an architect's company provided for him to use at work malfunctioned. With his employer's permission, he drops it off at a repair shop to be repaired. An employee of the repair shop tells the architect that the PDA will be ready in two days. Two days later, the architect sends his friend to pick up the PDA and gives the friend money to pay for the repairs. The friend picks up the PDA and pays the repair bill. Then, the friend takes the PDA and sells it on the street.

Of what crime is the friend guilty?

- (A) Larceny.
- (B) Embezzlement.
- (C) Larceny by trick.

(D) Obtaining property by false pretenses.

3) A defendant pulled up to the drive-in window of a local fast food restaurant at the height of the lunch rush. He placed his order, and about a minute later, the clerk set the bag of food on the counter and asked the defendant for payment. The defendant then grabbed the bag of food from the counter and drove off without paying.

Of what crime is the defendant guilty under the common law?

(A) Larceny by trick.

(B) Larceny.

(C) False pretenses.

(D) Burglary.

4) A driver's imported antique sports car is running hot, and she drops it off at a mechanic's garage to have it checked out. The mechanic takes the keys and tells the driver to come back the next day, even though he has no idea how to fix or even assess the mechanical problems of an imported antique sports car; he simply has never seen an imported antique sports car like this before and is dying to take the car for an innocent spin around town that night.

Later that day, while the mechanic is on his lunch break, the driver's ex-husband comes into the garage and presents a credit card that he still possesses in the driver's name. The ex-husband signs the credit card slip and work order with the driver's name and leaves in the imported antique sports car, intending to sell it for parts, because he feels he "got screwed" in the divorce settlement. The ex-husband then stops in at a local convenience store for something to eat, leaving the keys in the ignition; a detail that does not escape the attention of a store employee sweeping the store parking lot. The employee has a history of car theft but has since reformed. However, the employee's former boss, a dealer in stolen exotic cars, recently threatened to tell the judge in the employee's ongoing child custody battle about his 25 out-of-state arrests for grand theft auto, unless the employee delivers "something special" to his former boss. Feeling desperate, the employee hops into the sports car and delivers it to his ex-boss.

The mechanic is guilty of which, if any, of the following crimes?

(A) Larceny by trick.

(B) False pretenses.

(C) Embezzlement.

(D) No crime.

5) A woman has been a trusted personal assistant to a movie star for over 30 years. The assistant has always admired a beaded evening purse belonging to the aged actress, which was used as a prop in a popular film the actress made in her heyday. The actress gave the purse to her assistant for her birthday but did not look inside the bag before giving it to her. The assistant is very pleased by the gift and takes the purse home. Several weeks pass before the assistant has an opportunity to use the purse. When the assistant opens the purse, she finds a ring inside, which she recognizes as the engagement ring the actress received from her fourth husband. The assistant does not believe that the actress intended to give her the ring. However, knowing the quantity of jewelry that the actress has accumulated over the years, the assistant doubts that the actress will miss the ring, and decides to keep it.

The assistant is guilty of which, if any, of the following crimes?

- (A) Embezzlement.
- (B) Larceny.
- (C) No crime.
- (D) False pretenses.

6) An executive enjoys restoring classic cars in his spare time and has a large collection of tools. The executive's neighbor sees him working on a car in his driveway and asks to borrow a set of his tools. The executive is reluctant because the set is worth nearly \$500 and was a recent anniversary gift from his wife. However, the executive decides to be neighborly and lets the neighbor borrow the tool set. The neighbor promises to return the tools to the executive the following week. Two weeks pass, but the executive does not hear from the neighbor, so he goes to the neighbor's house to retrieve the tool set. The executive walks up to the neighbor's house and sees the tool set on a table in the neighbor's garage. The executive gathers up the tool set and takes it home, unaware that the neighbor had returned the executive's tool set to the executive's wife the previous week and bought himself his own set. The executive's wife had placed the tool set in a closet and had forgotten to tell him that it was returned.

Which, if any, of the following crimes has the executive committed?

- (A) Larceny.
- (B) Larceny by trick.
- (C) Theft.
- (D) none of the above.

7) An engineer, his co-worker, and his friend are charged with conspiracy to commit burglary. During the State's case, the State introduces evidence that the defendants were caught leaving a

homeowner's garage, which is attached to his house, with a power washer and compressor. None of the defendants knew the homeowner personally. The State claims that the men went there together and had no permission, implied or otherwise, to enter the garage, and the lock on the garage was broken. At trial, the co-worker testifies that the engineer told him that he needed help to get some stuff from his brother-in-law's garage. The co-worker indicates that the engineer told him that his brother-in-law was a jerk and had his stuff for months and will not return his calls. The co-worker further states that he went along to help the engineer get back his rightful property. The friend testifies that he thought that the other two were up to no good, so he made a call to the police and told them of his suspicions. He testifies that he went along to be sure that they were caught, and that his call is the only reason that the police were present when the defendants left the garage with the stolen merchandise. The engineer did not testify.

If the jury believes the co-worker's testimony, how should it rule as to the conspiracy charge against him?

- (A) Not guilty, because the co-worker had no intent to steal.
- (B) Not guilty, because the co-worker did not have malice in his heart when the crime was committed.
- (C) Guilty, because the defendants entered the property without permission, and they clearly had an agreement to do so.
- (D) Guilty, because the co-worker did not check out the engineer's story, and his good intentions are not enough to absolve him.

8) The supervisor, an engineer, and a secretary have worked for the local paper manufacturing plant for the past 30 years. The supervisor has been especially hard on both the engineer and the secretary. One Friday night, while drinking heavily at a nearby bar, the engineer and the secretary agreed to kill the supervisor. They decided that the best way to accomplish their goal would be to cut the brake cable on the supervisor's car. To do this, the engineer agreed to purchase an "auto grade" cable cutter. The next day, the engineer purchased the cable cutters and gave them to the secretary. On Monday, the engineer began to regret his decision to kill the supervisor. The engineer called the secretary on his cell phone to inform her that he was withdrawing from their agreement. However, the secretary had just cut the cable on the supervisor's car. The engineer saw the supervisor enter his car and drive away from the plant. Despite the broken brake cable, the supervisor made it safely home.

Is the engineer guilty of conspiracy?

- (A) Yes, because he purchased the cable cutter.
- (B) Yes, because intoxication is never a defense to the crime of conspiracy.
- (C) No, because the engineer withdrew from the conspiracy.

(D) No, because the supervisor made it safely home.

9) A clerk works in a print shop that handles government treasury bills or "T-bills." The clerk and his friend concoct a plan to steal a batch of T-bills from the print shop. The clerk believes that he can get into the building and make it look like a burglary. The friend has told the clerk that a buyer might be able to fence the T-bills for them. The clerk contacts the buyer and informs the buyer of the plan to steal the T-bills. The buyer agrees that it sounds like a solid plan, and he agrees to purchase the T-bills outright. The clerk and his friend succeed in stealing the T-bills, and the next day, they sell them to the buyer at \$.50 on the dollar. The following day, all three men are arrested. The buyer is charged with conspiracy to commit burglary.

What is the likely outcome of the buyer's trial?

(A) Guilty, because he purchased the T-bills.

(B) Guilty, because although a late participant, he did join in the conspiracy.

(C) Not guilty, because he did not participate in the planning or execution of the larceny.

(D) Not guilty, if the clerk and the friend are not tried with him.

10) A woman in need of cash decided to rob a bank. She needed transportation to the bank and, thus, asked her friend if she would drive her. The woman did not tell her friend of her plans to rob the bank. The friend agreed and drove the woman to the bank. As the friend waited in the car in the bank parking lot, the woman went inside and took money from a surprised bank teller at gunpoint. As the woman was leaving the bank, a security guard tried to stop her from leaving. In the struggle, the woman shot and killed the guard. The police arrived and arrested the woman and her friend in the bank parking lot.

Which of the following statements most accurately states the criminal liability of the two women?

A The woman is guilty of robbery and felony murder, and her friend is guilty of larceny and involuntary manslaughter.

B **The woman is guilty of robbery and felony murder, and her friend is not guilty of any crime.**

C Both women are each guilty of robbery and felony murder.

D Both women are each guilty of robbery and voluntary manslaughter.

11) A young man was an avid science fiction fan whose wealthy parents paid little attention to him. For his 18th birthday, his father gave him his own credit card to permit him to indulge most of his fantasies. One day, the young man was watching a television show about extraterrestrials

who emigrate to Earth. The episode depicted a cruel "game," which the aliens' former masters had compelled them to play, involving a rotating cylinder with several nozzles, one of which sprayed a fatal corrosive liquid on one player, killing him. Each of two players alternatively selected a nozzle and activated it, and the unlucky one who selected the nozzle connected to the deadly liquid lost the game and his life.

The young man was fascinated and determined to duplicate the game for himself. He used his credit card to have a machine built that duplicated the operation of the device on the television show. Since he knew of no corrosive liquid that would be instantly fatal in real life, he decided to have pistols installed instead of nozzles. The two players would sit opposite each other, one would cause the cylinder to spin, and when it stopped with one of the eight pistols pointed at the selecting player, the other player would press a button which fired that pistol. Only one of the pistols was loaded. The players would alternate in an identical fashion, and the game would continue until one player activated the loaded pistol.

When the young man ordered eight pistols from a local gun store, the owner called the young man's father and said that he (the owner) was leery of permitting such an unusual transaction. The father approved the purchase without giving the matter much thought. The young man had the completed machine installed in the guest cottage of their estate and invited his 17-year-old friend, another science fiction freak, to play the deadly game. On the fifth "round," the friend spun the cylinder, and, selecting a pistol, the young man pushed the button, and the pistol fired. The barrel was aligned almost exactly with the friend's heart, and he was killed instantly.

If the young man is charged with murder, which of the following is the most likely result?

A **Conviction of murder.**

B Conviction of involuntary manslaughter.

C Acquittal, because consent is a complete defense.

D Acquittal, because the negligence of the father is a complete defense.

12) A husband and wife decided they could make some cash from the wife's employer. They planned to set up a "fake" biological weapon to cause minor damage in the insurance company where the wife worked and then planned to demand payment after threatening to set off several other similar "live" weapons which were planted around the company. However, the husband decided that minor damage wouldn't make enough of an impression and used live anthrax spores in the weapon. They placed the weapon together, and one month after it was detonated, eight employees who were exposed to the spores died from anthrax.

Which is the most serious crime that the wife could be found guilty of?

A **Felony murder.**

B Conspiracy to commit murder.

C Manslaughter.

D Robbery.

13) A man and his wife decided to take a cross-country road-trip in a large recreational vehicle. Along the way, the couple stopped in Las Vegas and lost all of their money playing high stakes bingo. In order to survive, they broke into empty homes to gather food and any money they could find. They also looked for jewelry and other valuables that they could pawn for cash. While the wife cleaned out the valuables in a house near the Vegas strip, the man waited in the car as a look out. The homeowner, who was taking a nap, surprised the wife as he appeared in the laundry room doorway and shouted "Get out before I call the cops." In a panic, the wife hit the homeowner in head with an iron. The man and wife assumed that the homeowner was dead. They decided to cover up the death by short circuiting a heavy duty 220 volt outlet in the laundry room and starting a small fire to make it look like an accident. The wife went back to the car while the man started a small fire in the laundry room near the body. Neither the man or the wife ever checked to see if the homeowner was dead. In fact, the homeowner was breathing but unconscious, and later died as a result of smoke inhalation from the fire.

What is the most serious crime, if any, for which the man can be convicted?

A Involuntary manslaughter.

B Voluntary manslaughter.

C **Felony murder.**

D No homicide related

crime.

14) A woman decided to meet her husband at work on their tenth wedding anniversary. She drove to the building where her husband worked and headed towards his office. As she approached the office, she saw her husband's secretary coming out. The secretary was disheveled and ran for the bathroom as soon as she saw the wife. Convinced that the secretary and her husband were having an affair, the wife ran out to her car to retrieve a gun. While at the car, she guzzled a 1/2 pint of brandy that she kept in the car for emergencies. When she returned a few minutes later, she reached into her purse, removed the gun, and shot the secretary in the head. The victim died before help could arrive. In reality, the husband and his secretary were not having an affair. Rather, the secretary had visited the husband's office to model and wrap a new sable coat that the husband had purchased for his wife as an anniversary present.

Of what crime, if any, should the wife be found guilty?

A **Murder.**

B Voluntary manslaughter.

C Involuntary manslaughter.

D No crime.

15) A man with a chainsaw was attempting to cut off his friend's hand after the two engaged in a heated argument. The man did not intend to kill his friend.

Which of the following statements is true?

A The friend may use nondeadly force to defend against the man, because the man did not intend to kill him.

B The friend may use nondeadly force to defend against the man, because the man did not use deadly force against the friend.

C **The friend may use deadly force to defend against the man, because the man threatened great bodily injury with his attack.**

D The friend may only use that force to defend against the man which is exactly equal to the force that the man is using, which is to cut off a limb.

16) Five men were into drinking beer and playing cards in one of the men's garage. The first man bluffed on a hand having only a pair of twos and all the other players folded their hands. "Let's see those cards," said a second man. The first man, who had consumed three beers over the previous three hours, responded, "Pay to see, dummy." A third man, who had consumed eight beers in two hours, said, "You had nothing and better show those cards right now. You're a low-down cheater and a liar." The first man replied, "I don't have to show you anything, you moron." The third man yelled back, "Now you're in for it!" and hurled one of the decks of cards and the automatic card shuffler directly at the first man, missing his head by inches. The third man then charged at the first man with a glass beer mug raised over his head. Just as the third man swung the beer mug at the first man's head, the first man pulled out a knife and stabbed the third man in the chest, killing him while the others looked on in horror.

What crime, if any, did the first man commit?

A **No crime.**

B Voluntary manslaughter.

C Second-degree murder.

D Premeditated murder.

17) A man suspected his neighbor of having an affair with his wife. The man went to the neighbor's home and said to him, "If I see you with my wife again, I am going to come back and kill you." The neighbor was afraid that the man would actually carry out his threat.

Is the man guilty of assault?

A Yes, because the man acted with threatening conduct toward the neighbor.

B Yes, because the neighbor had a reasonable apprehension of imminent harm.

C No, because the man lacked the present ability to commit the threatened battery against the neighbor.

D **No, because the man made a conditional threat which was not accompanied by an overt action to accomplish the threat.**

18) A man was at a concert with his brother when they were aggressively approached by a group of band members. The band members began yelling at the brother for obstructing their view of the stage and the brother told the band members to leave him alone. Then, one of the band members punched the brother in the face, causing him to fall to the ground. While the man did not actually see the band member punch the brother, he assumed what had happened based on seeing his injured brother on the floor. The man then charged at the band member, kicking him in the ribs with his foot and causing him to fall onto the ground in pain. Two police officers responded to the scene and immediately arrested the man.

Was the man justified in kicking the band member?

A No, because the man did not see the band member punch his brother.

B No, because the man was only justified to punch the man, not to kick him.

C **Yes, because the force that the man used on the band member was justified to defend his brother.**

D Yes, because a person can always use deadly force to protect another person.

19) At an exceptionally busy restaurant, the owner and his staff often go out after work and blow off steam by getting drunk. One night, the owner and his employees stop into a local bar for some drinks. Late into the evening, after the owner pays for yet another round of drinks, the restaurant manager sees the owner's wallet slip out of his pocket and fall to the ground. The owner is too drunk to notice that his wallet is missing, and the manager surreptitiously picks it up. She knows that the owner always carries a lot of cash and that, even if she removes some of the money before returning the wallet, the owner will probably not even remember later how much he spent. Twenty minutes later, however, the manager realizes that it would be wrong to take advantage of her manager in this manner, and she returns the wallet, with all the cash inside, to the owner.

Of what crime, if any, is the manager guilty?

(A) Larceny.

(B) Embezzlement.

(C) Receiving stolen property.

(D) No crime.

20) During a defendant's trial, a clerk who worked in a 24-hour convenience store testified. The clerk stated that one night, while she was in the back room of the store getting supplies, she heard a noise and looked up to see the defendant's back as he left the store. The clerk added that it had been a long night, and she had been feeling sleepy from a cold medication. She stated that, when she next checked the cash register, all the money was gone. She called the police, who reviewed the store surveillance tape, which was entered into evidence at the trial. The tape showed the defendant bursting abruptly through the front door of the store with a semi-automatic handgun drawn and aimed toward the register area; then, when the defendant saw that there was no one behind the counter, he returned the gun to his belt, removed all the cash from the register, and fled.

Of what crime is the defendant likely to be convicted?

(A) Larceny.

(B) Robbery.

(C) Robbery or larceny.

(D) Burglary.

Monterey College of Law
Criminal Law & Procedure – Section 2 (Hybrid)
Midterm Examination – Answer Key

Fall 2024

Prof. K. Smith

QUESTION 1

Theories of Liability:

Second-Degree Murder: CALCRIM 520

First-Degree Murder – Premeditation and Deliberation: CALCRIM 521

Aiding and Abetting: CALCRIM 401

Possible Defenses:

Heat of Passion: Reduction to Voluntary Manslaughter: CALCRIM 570

Imperfect Self-Defense: CALCRIM 571

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Theories of Liability for Daniel:

Issue: Is Daniel guilty of the Second-Degree Murder (CALCRIM 520) of Victor?

Rule:

- 1) The defendant committed an act that caused the death of another person;
- 2) When the defendant acted, he had a state of mind called malice aforethought;
- 3) He killed without lawful justification.

Sub-Rules:

Express malice: If he unlawfully intended to kill.

Implied Malice:

1. He intentionally committed the act;
2. The natural and probable consequences of the act were dangerous to human life;
3. At the time he acted, he knew his act was dangerous to human life; AND
4. He deliberately acted with conscious disregard for human life.

Analysis:

As to Element 1, shooting twice at Victor proximately caused the death of Victor.

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As to Element 2, we must determine if malice aforethought exists.

As to **Express Malice**, firing twice and one of the bullets almost striking Victor in the head as well as the second shot striking Victor in the chest shows Daniel's unambiguous intent to kill.

Express malice is likely found here.

Alternatively, as to **Implied Malice**:

As to Element 1, there is no indication that Daniel was under the influence, unconscious, or under duress. Daniel intentionally fired his weapon twice, which cuts against the idea of an accidental discharge.

Element 1 is likely met.

As to Element 2, the facts state that Daniel fired the weapon twice from a distance of ~ 20 feet, with one of the bullets striking the wall ~ 1 foot above Victor's head and the second striking Victor in the chest. Firing a weapon a close range is incredibly dangerous to human life.

Element 2 is likely met.

As to Element 3, there is no indication that Daniel does not know that firing a weapon at close range is dangerous to human life. In addition, firing it twice at the same person shows that he knows his acts will likely result in injury or death to the target. Also, because Daniel brought his firearm without being asked, and because he acknowledged he had a gun upon David asking him, he knows that his actions are dangerous to human life.

Element 3 is likely met.

As to Element 4, there is no indication that he pulled the trigger accidentally. Firing twice also cuts against that argument. Also, because Daniel fired twice and one of those shots hit the wall ~ 1 foot above Victor's head and the second struck Victor in the chest, that increases the danger to human life.

Element 4 is likely met.

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Therefore, implied malice to kill Victor exists.

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As to element three, there are no facts that give rise to a lawful justification.

Element three is met.

Conclusion: Daniel is guilty of a second-degree murder of Vincent.

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Issue: Is Daniel guilty of a first-degree murder (CALCRIM 521) of Victor?

Rule:

The defendant is guilty of first-degree murder if the People have proved that he acted willfully, deliberately, and with premeditation.

The defendant acted willfully if he intended to kill.

The defendant acted deliberately if he carefully weighed the considerations for and against his choice and, knowing the consequences, decided to kill.

The defendant acted with premeditation if he decided to kill before completing the acts that caused death.

Analysis:

As to willfully, firing twice shows an intent to kill. Accidental discharge is much less likely as a result.

Willfully is likely found.

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As to acting deliberately, since Daniel got his gun near the start of the fact pattern, he knows that drug deals are inherently dangerous and got protection for himself and for David. Daniel also had the opportunity to drive around for 15 minutes looking for Victor. During that time, the likelihood of a physical confrontation escalates, and Daniel has time to consider his actions and the consequences. In the end, he fired twice at Victor anyway.

Deliberately is likely found.

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As to premeditation, the facts state that Daniel has the firearm at his side when he gets within twenty feet, not that he pulled it after the verbal confrontation. Daniel is ready to use the weapon. Daniel raises the weapon, aims, and fires twice at Victor.

Premeditation is likely found.

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Conclusion:

Daniel is guilty of a first-degree murder of Vincent.

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Theories of Liability for David:

Issue: Is David guilty of a second-degree murder of Vincent (CALCRIM 520) through an aiding and abetting theory (CALCRIM 401)?

Rule:

1. The perpetrator committed the crime;
2. The defendant knew that the perpetrator intended to commit the crime;
3. Before or during the commission of the crime, the defendant intended to aid and abet the perpetrator in committing the crime; AND
4. The defendant's words or conduct did in fact aid and abet the perpetrator's commission of the crime.

Someone aids and abets a crime if he or she knows of the perpetrator's unlawful purpose and he or she specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the perpetrator's commission of that crime.

Analysis:

As to element 1, the perpetrator is Daniel in this instance. As shown above, he committed a first-degree murder of Victor.

Element 1 is likely met.

--

As to element 2, David knew that Daniel intended to commit the crime since he knew that Daniel had a gun on him, that he did not object during the 15 minutes of looking for Victor, and that he pulled his gun out once he was within 20 feet of Victor. This was a "get back at them" situation.

Element 2 is likely met.

--

As to element 3, David drove the car and spotted Victor. David parked the car around the corner as to not be seen. David approached with Daniel, and David saw Daniel remove the firearm and hold it at his side. David never asked Daniel to stop, to reconsider, to only "scare" the duo.

Element 3 is likely met.

--

As to element 4, David drove around for ~ 15 minutes looking for Victor, David drove Daniel to the scene, parked around the corner, out of sight. This gave them an element of surprise. David also asked Daniel if he had his gun with him. David then turned to Daniel after words had been exchanged and told Daniel to fire by saying, "Do it."

Element 4 is likely met.

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Conclusion: David is guilty of a second-degree murder of Vincent through an aiding and abetting theory.

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Issue: Is David guilty of a first-degree murder of Vincent (CALCRIM 521 & 562) through aiding and abetting (CALCRIM 401)?

Rule: See first-degree murder (CALCRIM 521) as listed above. The aider and abettor must share the same intent as the shooter.

Analysis: Since express malice was proven above, and since implied malice was proven above, David likely shared the same intent given his actions of looking for the duo, parking out of the duo's line of sight, and approaching with Daniel, who clearly had his gun out.

David shares the same analysis with Daniel as to willfulness, deliberation, and premeditation.

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Conclusion: David is guilty of a first-degree murder of Vincent through an aiding and abetting theory as listed above.

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Possible Defenses:

David's Possible Defenses to the Charges:

Issue: Can David have his murder charges reduced to voluntary manslaughter through a heat of passion defense (CALCRIM 570)?

Rule:

The defendant killed someone because of a sudden quarrel or in the heat of passion if:

1. The defendant was provoked;
2. As a result of the provocation, the defendant acted rashly and under the influence of intense emotion that obscured his reasoning or judgment; AND
3. The provocation would have caused a person of average disposition to act rashly and without due deliberation, that is, from passion rather than from judgment.

While no specific type of provocation is required, slight or remote provocation is not sufficient. Sufficient provocation may occur over a short or long period of time.

In deciding whether the provocation was sufficient, consider whether a person of average disposition, in the same situation and knowing the same facts, would have reacted from passion rather than from judgment.

If enough time passed between the provocation and the killing for a person of average disposition to “cool off” and regain his or her clear reasoning and judgment, then the killing is not reduced to voluntary manslaughter on this basis.

Analysis:

As to element one, the evidence showing provocation as to David includes Victor’s increase in price, Victor’s statements re: David’s girlfriend, the cheap fake bags instead of the counterfeit bags, and Victor laughing as David leaves the scene. Once David arrives at the scene of the murder, Victor speaks no words and commits no actions.

David has been taken advantage of, has lost extra money, has been insulted as to his GF, has been cheated out of the counterfeit bags promised to him, and was laughed at as he left the scene. The average person would likely chalk this one up to inexperience and to the dangers of a drug transaction, not something that would arouse a violent or intense emotion.

Element one is likely not met.

--

As to element two, the facts show that David discovered the canvas duffel bags after several minutes of driving. David then spent ~ 15 minutes driving around and looking for Victor. During that time, he asks Daniel if he brought his gun. One could argue that if provocation is sufficient, then David is acting rashly and under the influence of that intense emotion. David clearly is not taking time to plan or to plot his next actions. David knows he has a gunman with him, and David is looking for revenge as soon as possible. His statement of “Hey, you screwed me!” shows he is still upset by the drug deal gone bad.

Element two is likely met.

--

As to element 3, again, an average person would likely suffer the loss of extra money and marijuana and chalk it up to the dangers of a drug deal. They would not get a co-defendant who is armed, go look for the offenders, park around the block, walk up to the offenders, and order his co-defendant to fire.

Element three is likely not met.

--

In addition, “cooling off period” should be considered in this instance. The alleged provocation occurred ~ 15-20 prior to the shooting. This likely makes this an invalid defense as well.

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Conclusion:

David likely will NOT have his charge reduced to voluntary manslaughter in this instance.

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Issue: Can David have his charges reduced to voluntary manslaughter though imperfect self-defense (CALCRIM 571)?

Rule:

The defendant acted in imperfect self-defense if:

1. The defendant actually believed that he was in imminent danger of being killed or suffering great bodily injury; AND
2. The defendant actually believed that the immediate use of deadly force was necessary to defend against the danger; BUT
3. At least one of those beliefs was unreasonable.

Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be.

In evaluating the defendant's beliefs, consider all the circumstances as they were known and appeared to the defendant.

Analysis:

As to element one, the facts state that Victor took no threatening actions or said anything towards David before the shooting took place. If we look back at the initial buy, Victor had his hands in his hoodie pocket with a lump visible inside. However, that was ~ 15-20 minutes prior. No facts exist in this instance that would implicate self-defense at the time of the shooting.

Element one is not met.

--

As to element two, the facts do not support that danger existed at that moment for David to tell Daniel to fire at Victor. Again, the prior possibility of danger had likely lapsed.

Element two is not met.

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As to element three, both prior elements are not met.

Element three is not met.

--

Conclusion:

Imperfect self-defense is not a viable defense for David.

QUESTION TWO

Theories of Liability:

Burglary: CALCRIM 1700

Larceny: CALCRIM 1800

First-Degree Burglary: CALCRIM 1701

Robbery: CALCRIM 1600

Solicitation: CALCRIM 441

Possible Defenses:

Nothing specific from the CALCRIMs. Students can try to argue specific elements were not met.

--

Issue: Is Dylan guilty of a second-degree burglary?

Rule:

1. The defendant entered a building; AND
2. When he entered a building, he intended to commit theft.

Under the law of burglary, a person enters a building if some part of his or her body or some object under his or her control penetrates the area inside the building's outer boundary.

Analysis:

As to element one, the thrust of the argument is at what point does Dylan enter the building? Since an object under his control; specifically, the rake, enters into the building in order to open the door, this would be when an entry occurs.

Element one has been met.

--

As to element two, we need to define larceny.

Sub-Rule:

1. The defendant took possession of property owned by someone else;
 2. The defendant took the property without the owner's consent;
 3. When the defendant took the property, he intended to deprive the owner of it permanently,
- AND

4. The defendant moved the property, even a small distance, and kept it for any period of time, however brief.

Sub-Analysis:

As to element one, Dylan is entering into a home that is not his own. This is further evidenced by Dylan actually taking a few items from the house once he gets into the kitchen and bedrooms. He then uses a duffel bag from the residence to collect and transport the stolen items.

Element one is met.

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As to element two, there are no facts to show that this was a consensual taking. In addition, why break in if consent was given?

Element two is met.

--

As to element three, there is no indication that Dylan planned to return the property. Dylan was placing it in his car and was about to drive away.

Element three is met.

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As to element four, Dylan moved the property from the house to the trunk of his car, which was several streets away.

Element four has been met.

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As a result, element two of burglary has been met.

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Conclusion:

Dylan is guilty of a second-degree burglary.

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Issue:

Is Dylan guilty of a first-degree burglary?

Rule:

First degree burglary is the burglary of an inhabited house.

Analysis:

When Dylan entered the residence, it was a single-family residence. In addition, despite Dylan believing that no one was home, he found someone sleeping in a bed.

Conclusion:

Dylan is guilty of a first-degree burglary.

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Issue: While Dylan would be guilty of a first-degree burglary upon his entry into the residence, some students may look into the room within a building as an additional burglary under 1700. We have discussed concurrent burglaries, so they should not spend time on this. Bonus if they do.

--

Issue: When confronted by Vernon, and after Dylan takes his phone, is Dylan guilty of a robbery?

Rule:

1. The defendant took property that was not his own;
 2. The property was in the possession of another person;
 3. The property was taken from the other person or his immediate presence;
 4. The property was taken against that person's will;
 5. The defendant used force or fear to take the property or to prevent the person from resisting;
- AND
6. When the defendant used force or fear, he intended to deprive the owner of the property permanently.

Fear, as used here, means fear of injury to the person himself or herself.

Analysis:

As to element one, the property at issue was the cell phone. There is no indication that anyone other than Vernon owned the phone.

Element one is met.

--

As to element two, the property was in the personal possession of Vernon since he took the phone from his pocket before setting it on the ground.

Element two is met.

--

As to element three, when the property was taken, it was on the ground within ~ 20 feet. This would qualify within immediate presence. Alternatively, the property was taken from Vernon's person due to the actions of Dylan which caused Vernon to place it on the ground.

Element three is met.

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As to element four, the property was not given willfully as Vernon relinquished the phone only after a threat of force was made.

Element four is met.

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As to element five, there was no force used. Instead, there was a threat of force designed to invoke fear. Because Dylan had his hand in his pocket simulating a gun, and because he said he would kill Vernon, fear exists in this scenario.

Element five is met.

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As to element six, Dylan's intent is illustrated by driving away from the scene with the phone with no plans to return it.

Element six is met.

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Conclusion:

Dylan is guilty of a robbery.

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Issue: Is Dylan guilty of solicitation for murder?

Rule:

1. The defendant requested another person to commit the crime of murder; AND
2. The defendant intended that the crime of murder be committed.

Analysis:

As to element one, "take care of him" is ambiguous if Dylan means murder, a battery, an ADW, etc. Given the lack of specifics around this statement, it is unlikely that this is definitively a request for a murder to occur.

Sub-Rule:

See CALCRIM 520 for murder.

Sub-Analysis:

Implied malice would be difficult to reach here. The only information we have of Dylan's genuine request is an offer to "split the proceeds" with him. The items taken would not raise a significant amount of money is split between two people.

Element one is too ambiguous as to the crime requested.

Element one is likely not met.

--

As to element two, express and/or implied murder is difficult to prove under these facts as listed above. There is a monetary element, but it is likely a low amount of money for a murder for hire. The ambiguity of the statement also cuts against this element being proven.

Element two is likely not met.

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Conclusion:

Dylan is NOT guilty of solicitation to commit murder.

MULTIPLE CHOICE QUESTIONS

1) A federally licensed gun dealer was working at a gun show in State A. State A enacted a statute that made it a strict liability offense to sell any firearm or ammunition to anyone under the age of 21. The show held in State A was the biggest in the country, and the gun dealer hired an assistant to work for him during the show. The assistant told the gun dealer that they needed to move a lot of merchandise the first day of the show, because business slows as the show winds down. The morning of the first day of the show, a buyer, who was 20 years old, asked the assistant for a box of hollow-point bullets. The assistant asked for identification to verify the buyer's age. The buyer told the assistant that he had none, but he added, "Would that booth over there have sold me this if I wasn't of age?" The buyer then showed the assistant a brand new .357 Magnum. The assistant looked to the gun dealer for guidance, and the gun dealer nodded his approval. The assistant sold the buyer the bullets, and both the gun dealer and the assistant were subsequently arrested for selling ammunition to an underage person.

Is the assistant guilty of the offense?

- (A) No, because the assistant reasonably believed that the buyer was of age.
- (B) No, because the assistant was under duress from the gun dealer to make the sale.
- (C) Yes, because the buyer was underage.
- (D) Yes, because the assistant intentionally sold ammunition to someone who was under the age of 21.

Explanation:

The correct answer is: (C) Yes, because the buyer was underage.

With strict liability crimes, culpability is imposed on a defendant simply for committing the act that is prohibited by statute; no mens rea or intent is required. Here, because the statute made selling guns or ammunition to an underage person a strict liability offense, the assistant is guilty if he committed the prohibited act, regardless of his intent, the reasonableness of his mistake, or other extenuating circumstances.

- (A) Incorrect. No, because the assistant reasonably believed that the buyer was of age.

A reasonable mistake of fact is no defense to a strict liability public welfare offense. Statutes that regulate firearms are considered public welfare statutes. Therefore, it is irrelevant that the assistant reasonably believed the buyer to be 21. Thus, this answer is incorrect.

- (B) Incorrect. No, because the assistant was under duress from the gun dealer to make the sale.

The defense of duress justifies criminal conduct where the defendant reasonably believes that the only way to avoid unlawful threats of great bodily harm or imminent death is to engage in conduct proscribed by law. However, the mere fact that the assistant's boss nodded his head, indicating his approval of the sale, does not constitute a duress situation. As such, the assistant will not escape liability by asserting the defense of duress. Thus, this answer is incorrect.

(D) Incorrect. Yes, because the assistant intentionally sold ammunition to someone who was under the age of 21.

The facts do not indicate that the assistant intentionally sold ammunition to an underage person. More importantly, however, no particular mental state is required for strict liability crimes. Therefore, the assistant's intent is irrelevant. Thus, this answer is incorrect.

2) The personal digital assistant (PDA) that an architect's company provided for him to use at work malfunctioned. With his employer's permission, he drops it off at a repair shop to be repaired. An employee of the repair shop tells the architect that the PDA will be ready in two days. Two days later, the architect sends his friend to pick up the PDA and gives the friend money to pay for the repairs. The friend picks up the PDA and pays the repair bill. Then, the friend takes the PDA and sells it on the street.

Of what crime is the friend guilty?

(A) Larceny.

(B) Embezzlement.

(C) Larceny by trick.

(D) Obtaining property by false pretenses.

Explanation:

The correct answer is: (B) Embezzlement.

Embezzlement is the act of dishonestly appropriating goods, usually money, by one to whom they have been entrusted. For the crime of embezzlement to apply, the original taking must not be trespassory; that is, the crime of embezzlement occurs where the embezzler, who has the right to possess the property in question, subsequently converts the property to his own use. In this case the friend picked up the PDA at the architect's request, so his taking was not trespassory. The friend then converted the property to his own use when he subsequently sold the PDA. The friend is, therefore, guilty of embezzlement.

(A) Incorrect. Larceny.

Larceny is the taking and carrying away of the personal property of another with the intent to permanently deprive the owner thereof. Here, the friend clearly took and "carried away" the

PDA, and, by selling it, he evidenced his intent to permanently deprive the owner (the business) thereof. However, the crimes of larceny and embezzlement differ in that larceny involves a trespassory taking and conversion, while embezzlement occurs when one in lawful possession subsequently converts the property to his own use. Since the friend picked up the PDA at the architect's request, he had the right to possession of the architect's PDA; hence, his taking of the PDA would not be considered "trespassory." Therefore the friend is guilty of the crime of embezzlement, not larceny.

(C) Incorrect. Larceny by trick.

Larceny is the taking and carrying away of the personal property of another with the intent to permanently deprive the owner thereof. Larceny by trick is a form of larceny wherein the defendant uses fraud or deceit in order to gain custody of the personal property in question. Here, the friend took and "carried away" the PDA, and, by selling it, he evidenced his intent to permanently deprive the owner (the business) thereof. However, the friend did not use fraud or deceit to obtain possession of the PDA, since he had a right to possession by virtue of the architect's request. Therefore, the friend is not guilty of larceny by trick.

(D) Incorrect. Obtaining property by false pretenses.

Obtaining property by false pretenses is a crime where a false representation of a present or material fact by the defendant causes the victim to pass title to his property to the defendant who knows his representation to be false and intends thereby to defraud the victim. Here, the friend did not make any false representations in order to obtain title to the PDA. As a matter of fact, the friend never obtained title to the PDA, but only obtained possession of the object. Therefore, this answer is incorrect.

3) A defendant pulled up to the drive-in window of a local fast food restaurant at the height of the lunch rush. He placed his order, and about a minute later, the clerk set the bag of food on the counter and asked the defendant for payment. The defendant then grabbed the bag of food from the counter and drove off without paying.

Of what crime is the defendant guilty under the common law?

(A) Larceny by trick.

(B) Larceny.

(C) False pretenses.

(D) Burglary.

Explanation:

The correct answer is: (B) Larceny.

Larceny is the trespassory taking and carrying away of the personal property of another with the intent to permanently deprive the owner of his interest therein. In this case, the defendant clearly took and carried away the bag of food, for which he had not paid the clerk. Therefore, the defendant is guilty of larceny.

(A) Incorrect. Larceny by trick.

Larceny by trick is a form of larceny in which a defendant takes possession of property by means of a representation he knows is false. Here, it is true that the defendant wrongfully took and carried away the bags of food. However, given that he did not use lies or deception in order to gain possession of the bag of food, larceny is the more appropriate charge.

(C) Incorrect. False pretenses.

A person commits the crime of false pretenses when he obtains title to property by misrepresentation or a false promise at the time he takes title. Here, although the defendant arguably misrepresented himself as a paying customer, he did not obtain title of the food but merely possession. As such, the defendant is not guilty of false pretenses.

(D) Incorrect. Burglary.

Under its common law definition, burglary was the breaking and entering of the dwelling house of another at nighttime with the intent to commit a larceny or felony therein. Under the more modern construction of burglary, it is not required that the premises be a dwelling house, or that the breaking and entering take place "at nighttime." In this case, however, the defendant did not commit any breaking or entering. Therefore, even under the modern definition of burglary, the defendant did not commit the crime of burglary.

4) A driver's imported antique sports car is running hot, and she drops it off at a mechanic's garage to have it checked out. The mechanic takes the keys and tells the driver to come back the next day, even though he has no idea how to fix or even assess the mechanical problems of an imported antique sports car; he simply has never seen an imported antique sports car like this before and is dying to take the car for an innocent spin around town that night.

Later that day, while the mechanic is on his lunch break, the driver's ex-husband comes into the garage and presents a credit card that he still possesses in the driver's name. The ex-husband signs the credit card slip and work order with the driver's name and leaves in the imported antique sports car, intending to sell it for parts, because he feels he "got screwed" in the divorce settlement. The ex-husband then stops in at a local convenience store for something to eat, leaving the keys in the ignition; a detail that does not escape the attention of a store employee sweeping the store parking lot. The employee has a history of car theft but has since reformed. However, the employee's former boss, a dealer in stolen exotic cars, recently threatened to tell the judge in the employee's ongoing child custody battle about his 25 out-of-state arrests for grand theft auto, unless the employee delivers "something special" to his former boss. Feeling desperate, the employee hops into the sports car and delivers it to his ex-boss.

The mechanic is guilty of which, if any, of the following crimes?

(A) Larceny by trick.

(B) False pretenses.

(C) Embezzlement.

(D) No crime.

Explanation:

The correct answer is: (D) No crime.

The mechanic's act does not satisfy the elements of any of the listed crimes. The mechanic did not intend to permanently deprive the driver of her vehicle, and, hence, he is not guilty of larceny by trick. Furthermore, the mechanic did not cause the driver to convey to him the title to the sports car, and, as such, the mechanic's act does not fall within the definition of the crime of false pretenses. And because the mechanic did not misappropriate or complete an unlawful conversion of the sports car, the mechanic has not committed embezzlement. Thus, the mechanic is not guilty of any crime with regard to the driver's vehicle.

(A) Incorrect. Larceny by trick.

At common law, larceny was defined as the trespassory taking ("caption") and carrying away ("asportation") of the tangible personal property of another with the intent to permanently deprive the owner thereof. Larceny by trick is a form of larceny whereby the defendant obtains possession of the personal property of another by means of a representation or promise that he knows is false at the time he takes possession. Here, while the mechanic did obtain possession of the sports car by fraudulently representing his ability to diagnose the car's problems, he never intended to permanently deprive the driver of the vehicle; as such, the mechanic is not guilty of larceny by trick.

(B) Incorrect. False pretenses.

The statutory crime of false pretenses consists of a false representation of a present or past material fact by the defendant that causes the victim to pass title to his property to the defendant who knows his representation to be false and intends thereby to defraud the victim. Here, while the mechanic did misrepresent his ability to repair the sports car, he did not cause the driver to pass title to the car to him; as such, the mechanic is not guilty of the crime of false pretenses.

(C) Incorrect. Embezzlement.

Embezzlement is the fraudulent conversion of the property of another by a person in lawful possession of the property. Generally speaking, employees are considered to have custody (not possession) of their employer's property, and, as such, are usually subject to charges of larceny if

they wrongly appropriate this property. However, where a third party gives property directly to an employee for the benefit of the employer, or where the employee holds a relatively high-level position (such as office manager, bank president, corporate official), an employee is said to have possession of the property, making him subject to embezzlement charges for wrongful appropriation of the property. The specific fraudulent intent required to find one guilty of embezzlement may be negated by a claim of right or by an intent to restore the exact property. Here, because the driver gave the sports car to the mechanic for purposes of repair (i.e., for the benefit of the mechanic's business), and because the mechanic was the owner of the garage, the mechanic is considered to have been in possession of the vehicle (and, hence, could be subject to embezzlement charges). However, because the mechanic intended to restore the car to the driver after his planned joy ride and because he never misappropriated or completed the conversion of the sports car, the mechanic has not committed the crime of embezzlement.

5) A woman has been a trusted personal assistant to a movie star for over 30 years. The assistant has always admired a beaded evening purse belonging to the aged actress, which was used as a prop in a popular film the actress made in her heyday. The actress gave the purse to her assistant for her birthday but did not look inside the bag before giving it to her. The assistant is very pleased by the gift and takes the purse home. Several weeks pass before the assistant has an opportunity to use the purse. When the assistant opens the purse, she finds a ring inside, which she recognizes as the engagement ring the actress received from her fourth husband. The assistant does not believe that the actress intended to give her the ring. However, knowing the quantity of jewelry that the actress has accumulated over the years, the assistant doubts that the actress will miss the ring, and decides to keep it.

The assistant is guilty of which, if any, of the following crimes?

(A) Embezzlement.

(B) Larceny.

(C) No crime.

(D) False pretenses.

Explanation:

The correct answer is: (B) Larceny.

Larceny is defined as the intentional taking and carrying away of personal property in the possession of another without consent with intent to deprive the person of his interest in the property. To be guilty of larceny for lost or mislaid property, the finder must intend to steal the property, and second, the finder must either know who the owner is or have reason to believe (from markings on the property or from the circumstances of the finding) that she can find out the owner's identity. Here, because the assistant found the ring, knew the actress and intended to deprive the actress of her ring, she can be found guilty of larceny.

(A) Incorrect. Embezzlement.

Embezzlement occurs when a person who is in lawful possession of personal property of another fraudulently converts the property to the person's own use. The crime of embezzlement is distinguished from the crime of larceny by the requirement that the defendant have lawful possession of the property at the time that he or she develops the intent to steal. Here, as the assistant was not in lawful possession of the ring, she cannot be found guilty of embezzlement.

(C) Incorrect. No crime.

The assistant can be found guilty of larceny. Larceny is the intentional taking and carrying away of another's personal property with intent to deprive the person of his interest in the property. To be guilty of larceny for lost or mislaid property, the finder must intend to steal the property, and the finder must either know who the owner is or have reason to believe (from markings on the property or from the circumstances) that she can find out the owner's identity. Here, as the assistant found the ring, knew the actress, and intended to deprive the actress of her ring, she can be found guilty of larceny. Therefore, this answer is not correct.

(D) Incorrect. False pretenses.

The crime of false pretenses takes place when a person knowingly and falsely represents a material fact to defraud another, causing the victim to pass title to him. That did not happen here, where the assistant did not make any false statement, and title to the ring did not pass. Therefore, this is not the correct answer.

6) An executive enjoys restoring classic cars in his spare time and has a large collection of tools. The executive's neighbor sees him working on a car in his driveway and asks to borrow a set of his tools. The executive is reluctant because the set is worth nearly \$500 and was a recent anniversary gift from his wife. However, the executive decides to be neighborly and lets the neighbor borrow the tool set. The neighbor promises to return the tools to the executive the following week. Two weeks pass, but the executive does not hear from the neighbor, so he goes to the neighbor's house to retrieve the tool set. The executive walks up to the neighbor's house and sees the tool set on a table in the neighbor's garage. The executive gathers up the tool set and takes it home, unaware that the neighbor had returned the executive's tool set to the executive's wife the previous week and bought himself his own set. The executive's wife had placed the tool set in a closet and had forgotten to tell him that it was returned.

Which, if any, of the following crimes has the executive committed?

(A) Larceny.

(B) Larceny by trick.

(C) Theft.

(D) none of the above.

Explanation:

The correct answer is: (D) none of the above.

The executive has not committed any of these crimes because each requires that the perpetrator take the property of another, intending at the time to permanently deprive the victim of his interest in the property. Because the property must be "of another," a good faith claim of right is a valid defense. In this question, when the executive took the tool set from the neighbor's garage, he believed that he it belonged to him; as such, he took it under a claim of right. Thus, the executive did not commit any of these crimes.

(A) Incorrect. Larceny.

The crime of larceny requires that the perpetrator take the property of another, intending to permanently deprive the victim of his interest in the property. A good faith claim of right is a valid defense. In this question, when the executive took the tool set from the neighbor's garage, he believed that it belonged to him. Because he took it under a claim of right, he cannot be guilty of larceny.

(B) Incorrect. Larceny by trick.

The crime of larceny by trick requires that the perpetrator take the property of another by means of a false representation, intending at the time to permanently deprive the victim of his interest in the property. Because the property must be "of another," a good faith claim of right is a valid defense. In this question, when the executive took the tool set from the neighbor's garage, he believed that the tool set belonged to him; as such, he took it under a claim of right. Also, there was no false representation involved. Therefore, the executive is not guilty of larceny by trick.

(C) Incorrect. Theft.

Some jurisdictions have theft statutes that consolidate common law crimes against property. The crime of theft requires that the perpetrator take the property of another, intending to permanently deprive the victim of his interest in the property. As with larceny, the property must be "of another," so a good faith claim of right is a valid defense. In this case, when the executive took the tool set from the neighbor's garage, he believed that it belonged to him, so he took it under a claim of right and cannot be guilty of theft.

7) An engineer, his co-worker, and his friend are charged with conspiracy to commit burglary. During the State's case, the State introduces evidence that the defendants were caught leaving a homeowner's garage, which is attached to his house, with a power washer and compressor. None of the defendants knew the homeowner personally. The State claims that the men went there together and had no permission, implied or otherwise, to enter the garage, and the lock on the garage was broken. At trial, the co-worker testifies that the engineer told him that he needed help to get some stuff from his brother-in-law's garage. The co-worker indicates that the engineer told him that his brother-in-law was a jerk and had his stuff for months and will not return his calls.

The co-worker further states that he went along to help the engineer get back his rightful property. The friend testifies that he thought that the other two were up to no good, so he made a call to the police and told them of his suspicions. He testifies that he went along to be sure that they were caught, and that his call is the only reason that the police were present when the defendants left the garage with the stolen merchandise. The engineer did not testify.

If the jury believes the co-worker's testimony, how should it rule as to the conspiracy charge against him?

- (A) Not guilty, because the co-worker had no intent to steal.
- (B) Not guilty, because the co-worker did not have malice in his heart when the crime was committed.
- (C) Guilty, because the defendants entered the property without permission, and they clearly had an agreement to do so.
- (D) Guilty, because the co-worker did not check out the engineer's story, and his good intentions are not enough to absolve him.

Explanation:

The correct answer is: (A) Not guilty, because the co-worker had no intent to steal.

The crime of conspiracy is defined as an agreement of two or more people to commit a crime or to accomplish a legal end through illegal actions. The law requires the conspirators have agreed to engage in a certain illegal act. If the co-worker's testimony is to be believed, however, the co-worker did not have any intent to steal or to commit any illegal act. If, as he testified, the co-worker did not enter into an agreement with the other defendants to commit an unlawful act but rather believed that they were out to lawfully pick up items belonging to the engineer, the co-worker cannot be guilty of conspiracy.

(B) Incorrect. Not guilty, because the co-worker did not have malice in his heart when the crime was committed.

To be guilty of conspiracy, it is not necessary that a defendant have "malice in his heart." By the same token, the presence of "malice" in one's heart does not necessarily make a party guilty of conspiracy. For instance, if it had been true that the men were lawfully retrieving from the homeowner's garage items owned by the engineer, but the co-worker had mistakenly believed that he and his friends were stealing these items, the co-worker would not be guilty of conspiracy, despite the "malice in his heart." As such, this response is incorrect.

(C) Incorrect. Guilty, because the defendants entered the property without permission, and they clearly had an agreement to do so.

If, as he testified, the co-worker did not enter into an agreement with the other defendants to commit an unlawful act but simply agreed to help them lawfully pick up items belonging to the

engineer, the co-worker cannot be guilty of conspiracy even though the defendants entered the property without permission and they had agreed to do so prior to the entering.

(D) Incorrect. Guilty, because the co-worker did not check out the engineer's story, and his good intentions are not enough to absolve him.

This answer is incorrect, because the co-worker was under no obligation to confirm the engineer's apparently reasonable story. The co-worker's good intentions negate the requisite intent needed for the crime of conspiracy.

8) The supervisor, an engineer, and a secretary have worked for the local paper manufacturing plant for the past 30 years. The supervisor has been especially hard on both the engineer and the secretary. One Friday night, while drinking heavily at a nearby bar, the engineer and the secretary agreed to kill the supervisor. They decided that the best way to accomplish their goal would be to cut the brake cable on the supervisor's car. To do this, the engineer agreed to purchase an "auto grade" cable cutter. The next day, the engineer purchased the cable cutters and gave them to the secretary. On Monday, the engineer began to regret his decision to kill the supervisor. The engineer called the secretary on his cell phone to inform her that he was withdrawing from their agreement. However, the secretary had just cut the cable on the supervisor's car. The engineer saw the supervisor enter his car and drive away from the plant. Despite the broken brake cable, the supervisor made it safely home.

Is the engineer guilty of conspiracy?

(A) Yes, because he purchased the cable cutter.

(B) Yes, because intoxication is never a defense to the crime of conspiracy.

(C) No, because the engineer withdrew from the conspiracy.

(D) No, because the supervisor made it safely home.

Explanation:

The correct answer is: (A) Yes, because he purchased the cable cutter.

A conspiracy is an unlawful criminal combination between two or more people who enter into an agreement with the specific intent to commit an unlawful act or a lawful act by unlawful means. An agreement may be evidenced by conduct where the conspirators demonstrate over time that they intended to achieve the same objective and agreed to work together toward that end. Under the common law, a conspiracy was complete once the agreement had been reached. According to the modern view, however, the defendant must have also committed an overt act in furtherance of the conspiracy. Here, the engineer and the secretary clearly agreed to kill the supervisor by cutting the brake cable on the supervisor's car. To this end, the engineer agreed to purchase an "auto grade" cable cutter. Thus, the agreement clearly existed, and, when the engineer purchased the cable cutter, he committed an overt act in furtherance of the conspiracy. As such, the requisite

elements of the crime of conspiracy are present, and the engineer will bear liability for this crime.

(B) Incorrect. Yes, because intoxication is never a defense to the crime of conspiracy.

While this answer is correct in concluding that the engineer will be liable for the crime of conspiracy, it is not true that intoxication is never a valid defense to conspiracy. To be a valid defense, voluntary intoxication must negate the requisite mental state. In this instance, however, the engineer purchased the cable cutters the next day, making this defense unavailable.

(C) Incorrect. No, because the engineer withdrew from the conspiracy.

Here, the engineer and the secretary agreed to kill the supervisor by cutting the brake cable on the supervisor's car. To this end, the engineer agreed to purchase an "auto grade" cable cutter. Under the common law, withdrawal was not a valid defense to the crime of conspiracy, because the crime was considered complete once the agreement was reached. Under the Model Penal Code, withdrawal by a co-conspirator may be a valid defense where the renouncing party gives timely notice of his plans to all members of the conspiracy and performs an affirmative act to thwart the success of the conspiracy. Here, while the engineer renounced his participation to the other person in the conspiracy, his attempted withdrawal will be ineffective, because it was not timely. In addition, the engineer failed to take any action to prevent the supervisor from getting into his car. As such, the engineer cannot escape liability on the grounds that he withdrew from the conspiracy.

(D) Incorrect. No, because the supervisor made it safely home.

Here, an agreement was made when the engineer and the secretary agreed to kill the supervisor. Then the engineer purchased the cable cutter, thus committing an overt act in furtherance of the conspiracy. As such, the requisite elements of the crime of conspiracy are present, and the engineer will bear liability for this crime. One can face liability for conspiracy even if the goal of the conspiracy is not achieved. Thus, the mere fact that the supervisor made it safely home does not relieve the engineer of criminal liability.

9) A clerk works in a print shop that handles government treasury bills or "T-bills." The clerk and his friend concoct a plan to steal a batch of T-bills from the print shop. The clerk believes that he can get into the building and make it look like a burglary. The friend has told the clerk that a buyer might be able to fence the T-bills for them. The clerk contacts the buyer and informs the buyer of the plan to steal the T-bills. The buyer agrees that it sounds like a solid plan, and he agrees to purchase the T-bills outright. The clerk and his friend succeed in stealing the T-bills, and the next day, they sell them to the buyer at \$.50 on the dollar. The following day, all three men are arrested. The buyer is charged with conspiracy to commit burglary.

What is the likely outcome of the buyer's trial?

(A) Guilty, because he purchased the T-bills.

- (B) Guilty, because although a late participant, he did join in the conspiracy.
- (C) Not guilty, because he did not participate in the planning or execution of the larceny.
- (D) Not guilty, if the clerk and the friend are not tried with him.

Explanation:

The correct answer is: (B) Guilty, because although a late participant, he did join in the conspiracy.

A conspiracy is an unlawful criminal combination between two or more persons who enter into an agreement with the specific intent to commit an unlawful act or a lawful act by unlawful means. Each co-conspirator is liable for the crimes of all the other co-conspirators where the crimes were both a foreseeable outgrowth of the conspiracy and were committed in furtherance of the conspiratorial goal. It is the nature of the agreement that determines whether there is a single or a multiple conspiracy. In a "chain" relationship, where several crimes are committed under one large scheme in which each member knows generally of the other parties' participation and there exists a community of interest, one single conspiracy results. Alternatively, in the so-called "hub-and-spoke" relationship, where one common member enters into agreements to commit a series of independent crimes with different individuals, multiple conspiracies exist. Here, the clerk and his friend clearly entered into an agreement to commit a burglary, planned the burglary, and executed the burglary. However, the buyer's knowledge of the plan to steal the T-bills and his agreement with the friend to purchase the T-bills following the completion of the burglary can be considered to be part of the overall plan to steal the T-bills. There is a community of interest between the buyer on one side and the clerk and his friend on the other, in that each side wanted the other to succeed. The selling of the T-bills to the buyer was a furtherance of the clerk and his friend's conspiratorial goal. Therefore, the buyer can be considered to be a part of the overall conspiracy.

- (A) Incorrect. Guilty, because he purchased the T-bills.

It is the nature of the agreement that determines whether there is a single or a multiple conspiracy. In a "chain" relationship where several crimes are committed under one large scheme in which each member knows generally of the other parties' participation and there exists a community of interest, one single conspiracy results. Alternatively, in the so-called "hub-and-spoke" relationship, where one common member enters into agreements to commit a series of independent crimes with different individuals, multiple conspiracies exist. Here, the buyer had knowledge of the clerk and his friend's plan to steal the T-bills and agreed to be a "fence" for the stolen T-bills. As such, there is a community of interest between the buyer on one side and the clerk and his friend on the other--each side wanted the other to succeed. The selling of the T-bills to the buyer was a furtherance of the clerk and his friend's initial conspiratorial goal. Therefore, the buyer can be considered to be a part of the overall conspiracy. This answer neglects to note that in addition to agreeing to purchase the stolen bills, the buyer knew of and assented to the clerk and his friend's plan to steal the T-bills, and the buyer's agreement to purchase the bills was likely key to the clerk and his friend's decision to move forward with their plan. Had the buyer not been aware of the planned burglary, and had he simply agreed after the

fact to purchase the T-bills, it is unlikely that the buyer would be guilty of conspiracy. As such, this is not the best response.

(C) Incorrect. Not guilty, because he did not participate in the planning or execution of the larceny.

A conspiracy is an unlawful criminal combination between two or more persons who enter into an agreement with the specific intent to commit an unlawful act or a lawful act by unlawful means. Each co-conspirator is liable for the crimes of all the other co-conspirators where the crimes were both a foreseeable outgrowth of the conspiracy and were committed in furtherance of the conspiratorial goal. It is the nature of the agreement that determines whether there is a single or a multiple conspiracy. In a "chain" relationship where several crimes are committed under one large scheme in which each member knows generally of the other parties' participation and there exists a community of interest, one single conspiracy results. Alternatively, in the so-called "hub-and-spoke" relationship, where one common member enters into agreements to commit a series of independent crimes with different individuals, multiple conspiracies exist. Here, the clerk and his friend clearly entered into an agreement to commit a burglary, planned the burglary, and executed the burglary. In addition to agreeing to purchase the stolen bills, the buyer knew of and assented to the clerk and his friend's plan to steal the T-bills, and the buyer's agreement to purchase the bills was likely key to the clerk and his friend's decision to move forward with their plan. Thus, the selling of the T-bills to the buyer was a furtherance of the clerk and his friend's conspiratorial goal. Therefore, the buyer can be considered to be a part of the overall conspiracy. Thus, this answer is incorrect.

(D) Incorrect. Not guilty, if the clerk and the friend are not tried with him.

There is no requirement that all conspirators be tried or charged together. In fact, in some instances, it may even be required that the trial of one or more of the co-conspirators be held separately, such as where one co-conspirator gives a statement implicating the others. Thus, this answer is incorrect.

10) A woman in need of cash decided to rob a bank. She needed transportation to the bank and, thus, asked her friend if she would drive her. The woman did not tell her friend of her plans to rob the bank. The friend agreed and drove the woman to the bank. As the friend waited in the car in the bank parking lot, the woman went inside and took money from a surprised bank teller at gunpoint. As the woman was leaving the bank, a security guard tried to stop her from leaving. In the struggle, the woman shot and killed the guard. The police arrived and arrested the woman and her friend in the bank parking lot.

Which of the following statements most accurately states the criminal liability of the two women?

A The woman is guilty of robbery and felony murder, and her friend is guilty of larceny and involuntary manslaughter.

B The woman is guilty of robbery and felony murder, and her friend is not guilty of any crime.

C Both women are each guilty of robbery and felony murder.

D Both women are each guilty of robbery and voluntary manslaughter.

Explanation

The correct answer is: B. The woman is guilty of robbery and felony murder, and her friend is not guilty of any crime.

Discussion of correct answer: This choice is the correct answer because the woman killed the security guard while in the perpetration of an inherently dangerous felony--robbery. However, her friend would have no liability. The friend would only be liable for the two crimes if she acted as an accomplice. Here, the friend did assist in the commission of the crime because she did drive the woman to the scene of the crime and probably would have helped her escape. However, to be considered an accomplice, the individual must provide assistance or encouragement with the intent that the crime be committed. Thus, in this case, the friend would not be considered the woman's accomplice because the friend did not intend to assist or encourage the commission of a robbery.

Discussion of incorrect answers:

A. Incorrect. The woman is guilty of robbery and felony murder, and her friend is guilty of larceny and involuntary manslaughter.

This choice tries to impose criminal liability on the friend, but she bears no criminal liability for robbery or the security guard's death. The friend could only bear responsibility as an accomplice. However, an accomplice must provide assistance or encouragement with the intent that the crime be committed. That is not the case here because the friend did not intend to assist or encourage the commission of a robbery.

C. Incorrect. Both women are each guilty of robbery and felony murder.

This choice is incorrect because the friend does not have any liability. She did not directly take part, and she is also not an accomplice because she did not assist or encourage the woman with intent that the woman commit the crime.

D. Incorrect. Both women are each guilty of robbery and voluntary manslaughter.

The woman is guilty of robbery and felony murder, but her friend has committed no crime. She did not assist or encourage the woman, intending that the woman commit a crime, so she is not an accomplice.

11) A young man was an avid science fiction fan whose wealthy parents paid little attention to him. For his 18th birthday, his father gave him his own credit card to permit him to indulge most of his fantasies. One day, the young man was watching a television show about extraterrestrials who emigrate to Earth. The episode depicted a cruel "game," which the aliens' former masters

had compelled them to play, involving a rotating cylinder with several nozzles, one of which sprayed a fatal corrosive liquid on one player, killing him. Each of two players alternatively selected a nozzle and activated it, and the unlucky one who selected the nozzle connected to the deadly liquid lost the game and his life.

The young man was fascinated and determined to duplicate the game for himself. He used his credit card to have a machine built that duplicated the operation of the device on the television show. Since he knew of no corrosive liquid that would be instantly fatal in real life, he decided to have pistols installed instead of nozzles. The two players would sit opposite each other, one would cause the cylinder to spin, and when it stopped with one of the eight pistols pointed at the selecting player, the other player would press a button which fired that pistol. Only one of the pistols was loaded. The players would alternate in an identical fashion, and the game would continue until one player activated the loaded pistol.

When the young man ordered eight pistols from a local gun store, the owner called the young man's father and said that he (the owner) was leery of permitting such an unusual transaction. The father approved the purchase without giving the matter much thought. The young man had the completed machine installed in the guest cottage of their estate and invited his 17-year-old friend, another science fiction freak, to play the deadly game. On the fifth "round," the friend spun the cylinder, and, selecting a pistol, the young man pushed the button, and the pistol fired. The barrel was aligned almost exactly with the friend's heart, and he was killed instantly. If the young man is charged with murder, which of the following is the most likely result?

- A **Conviction of murder.**
- B Conviction of involuntary manslaughter.
- C Acquittal, because consent is a complete defense.
- D Acquittal, because the negligence of the father is a complete defense.

Explanation

The correct answer is: A. Conviction of murder.

Discussion of correct answer: The young man's actions would be first-degree murder under the laws of any state. This was an "intent to kill" murder, as evidenced by his use of deadly weapons. A first-degree murder is an "intent to kill" murder plus premeditation. The premeditation here is quite pronounced, as the young man had to order the parts for his machine from different places. He saw the game on the television show involving an extremely serious risk of death or bodily injury - a one in eight chance of death - and strategized how to achieve a similar result. Therefore, he is most likely to be convicted of first-degree murder.

Discussion of incorrect answers:

B. Incorrect. Conviction of involuntary manslaughter. There was no sudden quarrel or heat of passion for voluntary manslaughter, and there was no commission of any crime not amounting to a felony; in addition, there was no commission of a lawful act that might produce death in an

unlawful manner (for voluntary manslaughter). However, the crime involved deadly weapons and premeditation, so murder is the soundest result here.

C. Incorrect. Acquittal, because consent is a complete defense. Consent by a victim is only a defense when it directly negates a specific element of the crime, as with rape. One cannot give legally valid consent to death or serious bodily injury. Therefore, this is not a correct answer.

D. Incorrect. Acquittal, because the negligence of the father is a complete defense. The father's conduct, no matter how negligent, would not be a superseding cause to cut off the young man's liability. The negligence of others does not affect the young man's intent to kill. Therefore, this is not a correct answer.

12) A husband and wife decided they could make some cash from the wife's employer. They planned to set up a "fake" biological weapon to cause minor damage in the insurance company where the wife worked and then planned to demand payment after threatening to set off several other similar "live" weapons which were planted around the company. However, the husband decided that minor damage wouldn't make enough of an impression and used live anthrax spores in the weapon. They placed the weapon together, and one month after it was detonated, eight employees who were exposed to the spores died from anthrax.

Which is the most serious crime that the wife could be found guilty of?

A **Felony murder.**

B Conspiracy to commit murder.

C Manslaughter.

D Robbery.

Explanation

The correct answer is: A. Felony murder.

Discussion of correct answer: Felony murder is an unintentional killing proximately caused during the commission or attempted commission of a serious or inherently dangerous felony. A co-felon is responsible for all actions his partners in crime take in furtherance of the crime, even if he does not have complete knowledge of or did not participate directly in those acts. In this case, the husband and wife were planning on setting off a weapon in a company only as a threat to demand money, in essence to commit a robbery, which is an inherently dangerous crime. However, even though the weapon was meant only as a threat and not intended to kill someone, people were killed as a result of the robbery, which is felony murder. Furthermore, although it was the husband that decided to make the weapon "live", which directly resulted in the death of eight people, the act was committed in furtherance of the crime the two were perpetrating together, and thus the wife is liable for the results of that action and can be convicted of felony murder.

Discussion of incorrect answers:

B. Incorrect. Conspiracy to commit murder. Conspiracy is a specific intent crime. While the husband and wife entered into a conspiracy to commit a crime when they decided to plant the weapon and extort payment with the threat of other weapons, the wife did not intend to commit murder and did not agree to do so. Therefore, though the husband's and the wife's actions resulted in murder, the wife cannot be convicted of conspiracy to commit murder.

C. Incorrect. Manslaughter. This answer is not the best choice. When faced with a general answer like murder, and a more specific one like felony murder, always go with the more specific where applicable. Here, the robbery serves as the underlying felony and the facts indicate we have a causally connected death. Therefore, since there was a felony murder, this is not the best choice.

D. Incorrect. Robbery. Robbery is an inherently dangerous crime, and so even if the husband and wife did not intend to kill anyone with the weapon, they can be charged with felony murder for the death of the employees.

13) A man and his wife decided to take a cross-country road-trip in a large recreational vehicle. Along the way, the couple stopped in Las Vegas and lost all of their money playing high stakes bingo. In order to survive, they broke into empty homes to gather food and any money they could find. They also looked for jewelry and other valuables that they could pawn for cash. While the wife cleaned out the valuables in a house near the Vegas strip, the man waited in the car as a look out. The homeowner, who was taking a nap, surprised the wife as he appeared in the laundry room doorway and shouted "Get out before I call the cops." In a panic, the wife hit the homeowner in head with an iron. The man and wife assumed that the homeowner was dead. They decided to cover up the death by short circuiting a heavy duty 220 volt outlet in the laundry room and starting a small fire to make it look like an accident. The wife went back to the car while the man started a small fire in the laundry room near the body. Neither the man or the wife ever checked to see if the homeowner was dead. In fact, the homeowner was breathing but unconscious, and later died as a result of smoke inhalation from the fire.

What is the most serious crime, if any, for which the man can be convicted?

A Involuntary manslaughter.

B Voluntary manslaughter.

C **Felony murder.**

D No homicide related crime.

Explanation

The correct answer is: C. Felony murder.

Discussion of correct answer: Felony-murder is an unintentional killing proximately caused during the commission or attempted commission of a serious or inherently dangerous felony.

Here, the wife committed burglary by breaking into the homeowner's home, because she broke and entered another person's dwelling with the intent to commit larceny. Therefore, both she and the man will be guilty for burglary as co-felons and for felony murder as they unintentionally killed the homeowner during the commission of their burglary. Since felony murder is the most serious crime listed in the answer choices, this answer is correct.

Discussion of incorrect answers:

A. Incorrect. Involuntary manslaughter. An unintentional death caused by criminal negligence or during the commission of a lawful act without due caution constitutes involuntary manslaughter. Here, the man's act, including his failure to check whether the homeowner was still alive, constitutes criminal negligence, at the very least. However, the man's act was committed during the commission of a felony, so the crime is more likely to be considered felony murder. In either case, since the question asks for the most serious crime for which the man can be convicted, felony murder is the correct answer.

B. Incorrect. Voluntary manslaughter. Voluntary manslaughter, or "heat of passion" killing, is an intentional killing mitigated by adequate provocation. Here, the man was not provoked in any way by the homeowner; in fact, he believed the homeowner to be dead. Thus, not only was the man not provoked, he could not have intended to cause the homeowner's death, as he believed the homeowner to be already dead. Thus, the crime of voluntary manslaughter does not apply.

D. Incorrect. No homicide related crime. While the man did not have intent to kill the homeowner because he believed him to be already dead, it is unlikely that the man will escape all criminal liability for the homeowner's death. Here, the unintentional killing occurred during commission of a felony. Additionally, the man's act, including his failure to check whether the homeowner was still alive, constitutes criminal negligence, at the very least. As such, it is highly unlikely that the man will not be convicted of any crime.

14) A woman decided to meet her husband at work on their tenth wedding anniversary. She drove to the building where her husband worked and headed towards his office. As she approached the office, she saw her husband's secretary coming out. The secretary was disheveled and ran for the bathroom as soon as she saw the wife. Convinced that the secretary and her husband were having an affair, the wife ran out to her car to retrieve a gun. While at the car, she guzzled a 1/2 pint of brandy that she kept in the car for emergencies. When she returned a few minutes later, she reached into her purse, removed the gun, and shot the secretary in the head. The victim died before help could arrive. In reality, the husband and his secretary were not having an affair. Rather, the secretary had visited the husband's office to model and wrap a new sable coat that the husband had purchased for his wife as an anniversary present.

Of what crime, if any, should the wife be found guilty?

A **Murder.**

B Voluntary manslaughter.

C Involuntary manslaughter.

D No crime.

Explanation

The correct answer is: A. Murder.

Discussion of correct answer: A defendant may intend to kill or seriously injure her victim and yet not be guilty of if there is a sufficient basis for justification, excuse, or mitigation. Where the defendant is provoked into killing, and the provocation is one that the law regards as reasonable, meaning one that would cause a reasonable person to lose self-control, the homicide is mitigated to voluntary manslaughter. Here, the facts explicitly state that the wife went to the car to retrieve the gun. The wife is guilty of murder since she, at the very least, intended to seriously injure the other woman, and there is no justification, excuse, or mitigation. There is no basis in the facts to conclude that voluntary intoxication negated her intent to kill.

Discussion of incorrect answers:

B. Incorrect. Voluntary manslaughter. Where a defendant kills the victim with malice, the homicide may be mitigated from murder to voluntary manslaughter if the defendant was moved to act by an objectively reasonable provocation. Historically, when one spouse observes the other spouse engaged in sexual relations with another person, this has been regarded as a sufficient provocation to mitigate voluntary manslaughter. There was no such observation in this case.

C. Incorrect. Involuntary manslaughter. Where the defendant is sufficiently provoked so that her intentional killing of another is mitigated from murder to manslaughter, the appropriate form of manslaughter is voluntary manslaughter. Involuntary manslaughter is present when a homicide is unintended, but the defendant's behavior causing the homicide was criminally (grossly) negligent or was a malum in se misdemeanor. On the facts, the wife at least intended to seriously injure the secretary which is murder.

D. Incorrect. No crime. In this question, the wife's mistaken belief in adultery was unreasonable, so she is guilty of murder. She intended at least to seriously injure the other woman, and there was no mitigating factor.

15) A man with a chainsaw was attempting to cut off his friend's hand after the two engaged in a heated argument. The man did not intend to kill his friend.

Which of the following statements is true?

A The friend may use nondeadly force to defend against the man, because the man did not intend to kill him.

B The friend may use nondeadly force to defend against the man, because the man did not use deadly force against the friend.

- C The friend may use deadly force to defend against the man, because the man threatened great bodily injury with his attack.

D The friend may only use that force to defend against the man which is exactly equal to the force that the man is using, which is to cut off a limb.

Explanation

The correct answer is: C. The friend may use deadly force to defend against the man, because the man threatened great bodily injury with his attack.

Discussion of correct answer: The force that a party is permitted to use in self-defense must be proportional to the initial attack. Deadly force may only be used in self-defense in response to an attack that threatens death or great bodily injury. Here, the man tried to inflict great bodily harm on his friend by cutting off his limb. Therefore, the friend is permitted to use deadly force in self-defense.

Discussion of incorrect answers:

A, Incorrect. The friend may use nondeadly force to defend against the man, because the man did not intend to kill him.

B. Incorrect. The friend may use nondeadly force to defend against the man, because the man did not use deadly force against the friend.

D. Incorrect. The friend may only use that force to defend against the man which is exactly equal to the force that the man is using, which is to cut off a limb.

16) Five men were into drinking beer and playing cards in one of the men's garage. The first man bluffed on a hand having only a pair of twos and all the other players folded their hands. "Let's see those cards," said a second man. The first man, who had consumed three beers over the previous three hours, responded, "Pay to see, dummy." A third man, who had consumed eight beers in two hours, said, "You had nothing and better show those cards right now. You're a low-down cheater and a liar." The first man replied, "I don't have to show you anything, you moron." The third man yelled back, "Now you're in for it!" and hurled one of the decks of cards and the automatic card shuffler directly at the first man, missing his head by inches. The third man then charged at the first man with a glass beer mug raised over his head. Just as the third man swung the beer mug at the first man's head, the first man pulled out a knife and stabbed the third man in the chest, killing him while the others looked on in horror.

What crime, if any, did the first man commit?

A No crime.

B Voluntary manslaughter.

C Second-degree murder.

D Premeditated murder.

Explanation

The correct answer is: A. No crime.

Discussion of correct answer: If a person has a reasonable belief that he is in imminent danger of unlawful bodily harm, he may, in self-defense, use a sufficient amount of force (deadly or non-deadly) that is reasonably necessary to prevent such harm, unless he is the aggressor. Deadly force is that which threatens death or serious bodily harm; non-deadly force threatens only bodily harm. In this instance, the first man was not the aggressor, and the third man had already thrown cards and a shuffler at him and was now charging at him with a glass mug held threateningly over his head. As such, the first man could have reasonably believed himself to be in imminent danger of serious bodily harm, and he was thereby justified in using deadly force to prevent the attack.

Discussion of incorrect answers:

B. Incorrect. Voluntary manslaughter.

Voluntary manslaughter, often known as "heat-of-passion" killing, is an intentional killing mitigated by adequate provocation or other circumstances negating malice aforethought. The period of time between the heat-of-passion and the fatal act must be short enough that a reasonable person would not have "cooled off." The classic examples of adequate provocation are where a person is the victim of a serious battery or threat of a deadly force or finds his/her spouse engaged in sexual conduct with another. In this instance, the third man was the aggressor and the first man did nothing other than tell the third man "I don't have to show you anything you moron." Given that the third man had already thrown an object at his head and was now rushing at him with another raised glass beer mug, the first man could have reasonably believed himself to be under threat of serious bodily harm. As such, the first man's actions would likely be considered self-defense rather than a heat-of-passion killing. Thus, this answer is incorrect.

C. Incorrect. Second-degree murder. In most states, murder is divided into two degrees for the purpose of imposing a more severe penalty for some murders than for others. First-degree murder actually encompasses several types of homicide including intent-to-kill murder accompanied by premeditation and deliberation, and murder in the commission of any of five named serious or inherently dangerous felonies ("BARRK"--burglary, arson, rape, robbery, and kidnapping). Murder not falling within any of the first-degree murder categories is considered second-degree murder. Voluntary intoxication can reduce first-degree intent-to-kill murder to second-degree murder by negating premeditation and deliberation. In this instance, however, even assuming that the first man had committed first-degree intent-to-kill murder (which is unlikely), he consumed three beers over a three-hour period, making it unlikely that he would be considered so intoxicated as to negate any premeditation or reflection that he may have engaged in prior to stabbing the third man. As such, the first man's act does not fall within second-degree murder. Thus, this answer is incorrect.

D. Incorrect. Premeditated murder. First-degree murder actually encompasses several types of homicide including intent-to-kill murder accompanied by premeditation and deliberation, murder in the commission of any of four or five named serious or inherently dangerous felonies known by the mnemonic "BARRK"--burglary, arson, rape, robbery, and kidnapping--and, in some jurisdictions, murder accomplished by lying in wait, poison, or torture. If a murderer engages in even brief reflection or premeditation, he may be guilty of first-degree murder. Here, however, the facts do not indicate any such reflection or premeditation on the first man's part prior to his stabbing of the third man; he was merely reacting to the sudden attack. As such, this type of first-degree murder cannot be the correct response.

17) A man suspected his neighbor of having an affair with his wife. The man went to the neighbor's home and said to him, "If I see you with my wife again, I am going to come back and kill you." The neighbor was afraid that the man would actually carry out his threat.

Is the man guilty of assault?

A Yes, because the man acted with threatening conduct toward the neighbor.

B Yes, because the neighbor had a reasonable apprehension of imminent harm.

C No, because the man lacked the present ability to commit the threatened battery against the neighbor.

D **No, because the man made a conditional threat which was not accompanied by an overt action to accomplish the threat.**

Explanation

The correct answer is: D. No, because the man made a conditional threat which was not accompanied by an overt action to accomplish the threat.

Discussion of correct answer: A defendant may commit criminal assault in several manners, including intentionally causing the victim to fear an immediate battery. The defendant must act with threatening conduct (mere words are insufficient) intended to cause reasonable apprehension of imminent harm to the victim. A conditional threat is generally insufficient unless accompanied by an overt act to accomplish the threat. Here, the man merely used words to threaten his neighbor. Moreover, his threat was conditional and he made no overt act to accomplish the threat. This does not mean that the man was unable to carry out the threat, as there is nothing in the facts indicating whether or not the man was able to kill the neighbor at the time he made the threat. Therefore, this is not an assault because the man made a conditional

threat against the neighbor which was not accompanied by an overt action to accomplish the threat.

Discussion of incorrect answers:

A. Incorrect. Yes, because the man acted with threatening conduct toward the neighbor.

B. Incorrect. Yes, because the neighbor had a reasonable apprehension of imminent harm.

C. Incorrect. No, because the man lacked the present ability to commit the threatened battery against the neighbor.

18) A man was at a concert with his brother when they were aggressively approached by a group of band members. The band members began yelling at the brother for obstructing their view of the stage and the brother told the band members to leave him alone. Then, one of the band members punched the brother in the face, causing him to fall to the ground. While the man did not actually see the band member punch the brother, he assumed what had happened based on seeing his injured brother on the floor. The man then charged at the band member, kicking him in the ribs with his foot and causing him to fall onto the ground in pain. Two police officers responded to the scene and immediately arrested the man.

Was the man justified in kicking the band member?

A No, because the man did not see the band member punch his brother.

B No, because the man was only justified to punch the man, not to kick him.

C **Yes, because the force that the man used on the band member was justified to defend his brother.**

D Yes, because a person can always use deadly force to protect another person.

Explanation

The correct answer is: C. Yes, because the force that the man used on the band member was justified to defend his brother.

Discussion of correct answer: In general, a person is justified in using force to defend a third person to the same extent that the person would be justified in using force to defend himself. As with self-defense, the amount of force used must be proportional to the initial attack. The majority rule focuses on the reasonableness of the defendant's belief that the third person was being unlawfully attacked. Here, the man was justified in kicking the band member because it was reasonable for him to believe that the band member punched his brother when he saw his brother injured on the floor. Test tip: When looking to decide if a defendant is guilty of the crime

of battery, ask yourself whether the defendant has a valid legal excuse for his action. In this case, the defendant would claim that he was merely defending his brother from an attack. The key to a successful defense of others defense to the crime of battery is that your action was objectively reasonable and proportional to the situation.

Discussion of incorrect answers:

A. Incorrect. No, because the man did not see the band member punch his brother. This answer reaches the wrong conclusion and states incorrect reasoning. As stated above, the majority rule focuses on the reasonableness of the defendant's belief that the third person was being unlawfully attacked. It is not necessary that the man actually see the band member punch his brother. It was reasonable for the man to believe that the band member punched his brother when he saw him lying injured on the ground.

B. Incorrect. No, because the man was only justified to punch the man, not to kick him. This answer reaches the wrong conclusion and provides incorrect reasoning. The amount of force that the third person is legally able to use is the same as with self-defense; the amount of force used must be proportional to the initial attack. Here, a punch and a kick are proportional amounts of force. In contrast, the man would not have been justified under the same scenario if he pulled out a gun and shot the band member in the head. However, here, the amount of force the man used was proportional to the amount the band member used on the brother.

D. Incorrect. Yes, because a person can always use deadly force to protect another person. Although this answer choice reaches the right conclusion, it does so for the wrong reason. A person is generally justified in using force to defend a third person to the same extent that the person would be justified in using force to defend himself. As with self-defense, the amount of force used must be proportional to the initial attack. Thus, a person cannot always use deadly force to protect another person. Here, the man would not be able to use deadly force to protect his brother.

19) At an exceptionally busy restaurant, the owner and his staff often go out after work and blow off steam by getting drunk. One night, the owner and his employees stop into a local bar for some drinks. Late into the evening, after the owner pays for yet another round of drinks, the restaurant manager sees the owner's wallet slip out of his pocket and fall to the ground. The owner is too drunk to notice that his wallet is missing, and the manager surreptitiously picks it up. She knows that the owner always carries a lot of cash and that, even if she removes some of the money before returning the wallet, the owner will probably not even remember later how much he spent. Twenty minutes later, however, the manager realizes that it would be wrong to take advantage of her manager in this manner, and she returns the wallet, with all the cash inside, to the owner.

Of what crime, if any, is the manager guilty?

(A) Larceny.

(B) Embezzlement.

(C) Receiving stolen property.

(D) No crime.

Explanation:

The correct answer is: (A) Larceny.

Larceny is defined as the taking and carrying away of the personal property of another with the intent to permanently deprive the owner of his interest therein. Here, at the time that she picked up the owner's wallet, the manager intended to permanently deprive him of at least some of the money inside. While she later had a change of heart, the crime of larceny was complete at the time that she acted with the requisite intent. As such, the manager is guilty of larceny.

(B) Incorrect. Embezzlement.

Embezzlement is defined as the fraudulent conversion or misappropriation of the property of another by one who is already in lawful possession. Here, the manager was never rightfully in possession of the wallet or its contents. As such, she cannot be guilty of embezzlement.

(C) Incorrect. Receiving stolen property.

For a party to be guilty of receiving stolen property, it is required that the property in question be "stolen property" at the time that it comes into the defendant's possession. In this case, at the time that the wallet came into the manager's possession, it was not stolen property; it had merely fallen out of the owner's pocket accidentally. As such, the manager is not guilty of receiving stolen property.

(D) Incorrect. No crime.

At the time that the manager picked up the owner's wallet, she intended to permanently deprive the owner of at least a portion of the money inside. Thus, although she later had a change of heart, the manager committed a crime when she acted with criminal intent.

20) During a defendant's trial, a clerk who worked in a 24-hour convenience store testified. The clerk stated that one night, while she was in the back room of the store getting supplies, she heard a noise and looked up to see the defendant's back as he left the store. The clerk added that it had been a long night, and she had been feeling sleepy from a cold medication. She stated that, when she next checked the cash register, all the money was gone. She called the police, who reviewed the store surveillance tape, which was entered into evidence at the trial. The tape showed the defendant bursting abruptly through the front door of the store with a semi-automatic handgun drawn and aimed toward the register area; then, when the defendant saw that there was no one behind the counter, he returned the gun to his belt, removed all the cash from the register, and fled.

Of what crime is the defendant likely to be convicted?

(A) Larceny.

(B) Robbery.

(C) Robbery or larceny.

(D) Burglary.

Explanation:

The correct answer is: (A) Larceny.

The defendant took and carried away the store's tangible property of another with the intent to permanently deprive them of it, so he is guilty of larceny. The crime of robbery consists of all the elements of larceny, plus two additional elements: 1) the taking must be from the person or presence of the victim; and 2) the taking must be accomplished by force, intimidation, threat, or violence. Given that the defendant took the money from an unmanned cash register rather than by force, intimidation, threat, or violence and that the clerk did not even see the defendant until he was already leaving the store, the two additional elements are not present. Therefore, the defendant is guilty of larceny but not robbery.

(B) Incorrect. Robbery.

Larceny is the taking and carrying away of the tangible property of another with the intent to deprive them permanently thereof. With two added elements, larceny becomes robbery: 1) the taking must be from the person or presence of the victim; and 2) the taking must be accomplished by force, intimidation, threat, or violence. In this instance, the cash register was unstaffed, so neither of these elements is present. As such, the defendant cannot be convicted of robbery.

(C) Incorrect. Robbery or larceny.

The defendant took the tangible property of another with the intent to permanently deprive the victim; as such, the defendant is guilty of larceny. However, the crimes of robbery and larceny are not interchangeable. The crime of robbery consists of all the elements of larceny, plus two additional elements: 1) the taking must be from the person or presence of the victim; and 2) the taking must be accomplished by force, intimidation, threat, or violence. Those two additional elements are not present here because the clerk was away from the register when the money was taken. As such, the defendant is guilty of larceny but not robbery.

(D) Incorrect. Burglary.

Burglary is the breaking and entering of the dwelling of another with intent to commit a felony therein. (Traditionally, it had to be at night, although this requirement is generally inapplicable

now.) It does not apply in this situation because there was no breaking (the convenience store was open) and no dwelling (no one lived in the store). Therefore, this is not the best answer.

1)

DANIEL'S CRIMES

Issue

Is Daniel guilty of 2nd Degree Murder?

Rule:

1. Defendant committed an act that caused death
2. When the defendant committed the act, defendant had a mental state called malice aforethought
3. Defendant killed without legal justification

Sub Rule

There are 2 types of Malice Aforethought, express malice aforethought and implied malice aforethought.

Express malice aforethought occurs when defendant had intent to commit the killing

Implied Malice aforethought occurs when the following elements are met:

1. Defendant intended to commit the act that caused death;
2. The natural and probable consequences of the act were dangerous to human life, in that the act had a high degree of probability of ending in death;
3. The defendant knew that the act was dangerous to human life; and
4. Defendant acted with a conscious disregard to human life.

Analysis

As to element one, Daniel's acts of shooting Victor, were the proximate cause of the death. Victor did in fact commit the act that caused the death of Victor.

Element 1 is met

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As to Element 2, it is necessary to analyze malice aforethought in order to decide if element 2 is met.

Express Malice Aforethought: The fact pattern indicate that Daniel intended to kill. Daniel had a total cool off moment of about 20 minutes. For 15 of those 20 minutes, Daniel actively looked for Victor in order to commit the act that caused the death. Victor shot his gun 2 times, which also implies intent and not just a mistake.

Due to the above stated fact, Express malice aforethought is met

Implied Malice Aforethought:

As for element one, Daniel's actions demonstrate that intended to commit the act that caused the death. The actions include actively searching for the victim in order to commit the crime, and shooting his weapon 2 times in order to complete the act.

Element one is met

As for element 2, discharging a weapon in the person of another human being, like Daniel did with Victor is definitely an act that is dangerous to human life and it involves a high probability of dead if a person is shot in the torso or head. Daniel in fact shot Victor in his torso provoking death.

Element 2 is met

As for element 3, Daniel knew that his act was dangerous to human life. Discharging a weapon towards another person is dangerous to human life. Any person can reasonably infer this.

Element 3 is met

As for element 3, the defendant did in fact act with a dangerous disregard to human life. Not only did Daniel discharge his weapon twice against Victor, but he aimed towards his head and missed and then he aimed towards his torso. Daniel was attempting to hit his vital life points in order to provoke death.

Thus, element 4 is met.

Implied Malice Aforethought is met

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Element 2 of second degree murder is then met. Defendant Daniel acted with the state of mind known as malice aforethought

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There was no legal justification to kill during the act.

Element 3 is met

Conclusion

Daniel is guilty of first degree murder

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second.

Issue

Is Daniel guilty of First Degree Murder

Rule

A person or defendant is guilty of first degree murder when they act willfully, deliberately, and with premeditation. A defendant acts willfully if he intended to kill. A defendant acted with deliberation if after taking into consideration the reason for and against killing and knowing the consequences still decided to kill. The defendant acted with premeditation if he had made up his mind to kill before committing the act of killing.

Analysis

The defendant acted willfully when committing the act, the defendant actively searched for the victim, then by shooting at the victim 2 times and by aiming at the victim's vital points, the defendant did in fact intend to kill.

The element to act willfully is met.

The defendant acted with deliberation, because the defendant had plenty of time between meeting the victim and committing the act to consider the consequence of the act. And regardless the defendant committed the act.

The element of the defendant acting deliberately is met.

The defendant acted with premeditation because before committing the act his actions demonstrated that he had already decided on killing the victim. Defendant actively searched for his victim to kill even after time to cool off had already passed and still committed the act.

The element of premeditation is met

Conclusion

Daniel is guilty of first degree murder.

DAVID'S CRIMES

Issue

Is David guilty of 2nd degree murder under theory of aiding and abetting

Rule

1. Perpetrator commits a crime;
2. Defendant knows that the perpetrator intends on committing crime;
3. Before and during the commission of the act the defendant intends to aid an abet the perpetrator by words or conduct; and
4. The words or conduct of the defendant did in fact aid and abet the perpetrator

Analysis

As to element one, the perpetrator committed the crime of murder.

Element 1 is met.

As to element 2, David did in fact know that the defendant was intending on committing the crime. David knew because he was in the car looking for the victim for about 15 minutes. David knew that perpetrator was in possession of a weapon in order to commit the crime.

Element 2 is met.

As to element 3, defendant by words and conduct aided and abetted before the commission. David had asked the perpetrator if he has his weapon insinuating that it should be used to kill the victim. Before the commission David also aided and abetted by helping the perpetrator look for the victim, David as in the vehicle helping the entire time. Then during the commission by word he told Daniel the perpetrator to "do it" referring to Daniel the perpetrator to discharge weapon.

Element 3 is met.

As to element 4, the defendant did in fact aid and abet. The defendant got out the vehicle with the perpetrator and right after the defendant yelled to the perpetrator "do it" the defendant discharged his weapon. The words of the defendant encouraged the perpetrator.

Element 4 is met.

Conclusion

The defendant is guilty of 2nd degree murder under a theory of aiding and abetting.

Issue

Is the defendant guilty of first degree murder under a theory of aiding and abetting

Rule

Please see above for the First degree murder rule (supra). In order to be guilty of first degree murder defendant's intent must be the same as perpetrator of the murder.

Analysis

The perpetrator is guilty under express and implied murder. Thus the defendant shares the same intent.

Conclusion

Defendant is guilty of first degree murder.

POSSIBLE DEFENSES DAVID

Issue

Can David lower first degree murder to voluntary manslaughter: heat of passion.

Rule:

1. Defendant was provoked ;
2. Due to the provocation, the defendant acted rashly, under influence of intense emotion that clouded reason or judgement;
3. The provocation would make a person of average disposition to act rashly, from passion rather than from judgement.

Analysis

As to element 1 David was provoked by the seller. Victor scammed David and also talked about his girlfriend.

Element 1 is met.

As to element 2, due to the fact that the response was delayed, meaning the response did not happen in the instant. Time to cool off happened so the influence of intense emotion had enough time to be dissipated, also it was Daniel that shot the gun and not David.

Element 2 is not met

As to element 3, the provocation can be considered severe to the point that it can make a person of average disposition act rashly

Element 3 is met

Conclusion.

The defense to reduce first degree to manslaughter is not applicable.

Issue

Can the defendant reduce first degree murder to voluntary manslaughter: imperfect self defense

Rule

1. The defendant reasonably believed that he was under imminent danger of suffering death or great bodily injury
2. The defendant reasonably believed that the use of deadly force was necessary in order to prevent harm.
3. At least one of the beliefs was incorrect.

Analysis

As to element 1 the defendant noticed something in the sweater of the victim Victor that could have possibly been a weapon. However the defendant and his friend left the area, meaning that the danger was no longer imminent.

Element 1 is not met.

As to element 2, there was no more reasonable belief to protect against danger by using deadly, because there was no more danger that was imminent.

Element 2 is not met.

As to element 3, at least one belief were incorrect. In this case actually 2 but at least 1.

Conclusion

First degree murder can not be reduced to manslaughter.

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DEFENSES FOR DANIEL

Issue

Can David lower first degree murder to voluntary manslaughter: heat of passion.

Rule:

1. Defendant was provoked ;
2. Due to the provocation, the defendant acted rashly, under influence of intense emotion that clouded reason or judgement;
3. The provocation would make a person of average disposition to act rashly, from passion rather than from judgement.

Analysis

As to element 1, Daniel was not the person directly provoked, the person directly provoked was David

Element 1 is not met.

As to element 3 defendant was not directly provoked, thus the provocation could not have clouded his mind.

Element 2 is not met.

As to element 3, again Daniel was not the person directly provoked, so the provocation could not have tested his average disposition to act rashly.

Element 3 is not met.

Conclusion

Daniel can not reduce first degree murder to manslaughter.

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Issue

Can the defendant reduce first degree murder to voluntary manslaughter: imperfect self defense

Rule

1. The defendant reasonably believed that he was under imminent danger of suffering death or great bodily injury
2. The defendant reasonably believed that the use of deadly force was necessary in order to prevent harm.
3. At least one of the beliefs was incorrect.

Analysis

As to element 1 the defendant noticed something in the sweater of the victim Victor that could have possibly been a weapon. However the defendant and his friend left the area, meaning that the danger was no longer imminent.

Element 1 is not met.

As to element 2, there was no more reasonably belief to protect against danger by using deadly, because there was no more danger that was imminent.

Element 2 is not met.

As to element 3, at least one belief were incorrect. In this case actually 2, but at least 1.

Conclusion

First degree murder can not be reduced to manslaughter.

2)

People v Dylan

Burglary

To be found guilty of burglary, the people must prove the following: 1) The defendant entered a building or room within a building 2) when he entered, he intended to commit larceny.

As to element 1, Dylan entered the Jones' house. Although the facts state that his arm or hand did not enter, the rake serves as an extension.

Element 1 has been met.

As to element 2, we first need to define larceny.

Larceny

To be found guilty of larceny, the people must prove the following: 1) Defendant took possession of property not his own; 2) Defendant took property without the owner's consent; 3) When the defendant took the property, he intended to permanently deprive the owner of it; and 4) The defendant moved the property even a small distance and kept it for any length of time.

As to element 1, Dylan took jewelry, a duffel bag and a fur coat along with other miscellaneous items. The property did not belong to him. It belonged to the Jones'.

Element 1 is met.

As to element 2, Dylan did not have permission to take these items. The Joneses' were asleep and did not authorize the taking of the personal belongings.

Element 2 is met.

As to element 3, we know that Dylan intended to deprive the owners of their property because he had placed these items in his trunk and he had parked his car several streets away. No facts indicate that he had any intention of returning the items.

Element 3 is met.

As to element 4, as we already mentioned above, he took the items from the Joneses' home and placed them in his car. He moved the items several streets away and into his trunk.

Element 4 is met.

Conclusion

Dylan is likely guilty of Larceny.

As to element 2 of Burglary, this element has been met. Further, one could argue that he should be charged with two counts of burglary. The first, because he entered into the home and the second would be his entering of the room within the home where he found the jewelry, fur coat and duffel bag.

Conclusion

Dylan is guilty of Burglary.

Burglary Degrees

First degree burglary is the burglary of an inhabited dwelling. All others are 2nd degree with some exceptions for noncommercial businesses during non-business hours.

Here, we know that there was a person sleeping in the home. In the second bedroom, Dylan saw a human shape in the bed. Thus, we know the house was in fact inhabited.

Dylan is guilty of 1st Degree Burglary

Robbery

In order to be found guilty of Robbery the following must be met: 1) Defendant took property that was not his own; 2) Defendant took the property from the other person's immediate presence; 3) The property was taken against the person's will; 4) When defendant took the property he used force or fear; 5) When the defendant used force or fear, he intended to deprive the owner of it.

As to element 1, Dylan took Vernon's cell phone. We know this is not Dylan's phone because it was in Vernon's pocket.

Element 1 is met.

As to element 2, Vernon was in Dylan's immediate presence when his phone was taken. We know this because Vernon had stopped right in front of Dylan's vehicle to ask what his business in the neighborhood was.

Element 2 is met.

As to element 3, Vernon's phone was taken against his will. We know that Dylan threatened Vernon with the "gun" he had in his pocket.

Element 3 is met.

As to element 4, Dylan did not use force but rather fear. When he placed his hand in his pocket and motioned as if he had a firearm, he led Vernon to believe that he was going to shoot him.

Element 4 is met.

As to element 5, we know that Dylan intended to deprive Vernon of his phone because he drove away with it.

Element 5 is met.

Conclusion

Dylan is guilty of Robbery.

Solicitation

In order to be found guilty of a case of solicitation the following must be met: 1) The defendant asked another person to commit a crime; 2) The defendant intended that the crime be committed and 3) The other party received the message.

As to element 1, Dylan asked his friend Walter to "help him get him back" and "I need you to take care of him for me." referring the neighborhood watch, Vernon. Based on the facts, we don't know what he means by get him back and take care of him, but we can infer that he is asking Walter to cause Vernon Harm.

Element 1 is met.

As to element 2, we know that Dylan intended that the harm to Vernon be committed because he tells Walter that once he completes this task he will split the proceeds from his res. burg.

Element 2 is met.

As to element 3, we know that Walter received the request because they discussed it over the phone.

Element 3 is met.

Conclusion

Dylan is guilty of solicitation.

Defenses

There are no facts to support a valid defense for Dylan.

END OF EXAM