

Kern County College of Law
CRIMINAL LAW
Midterm Examination
Fall 2024
Prof. D. Kinnison

General Instructions:

Essay Questions: Answer Three (3) Essay Questions

Total Time Allotted: Three (3) Hours

Question 1

DAVE suggested to FRED that they rob a bank. FRED agreed and said that he would go along with DAVE when he tries to rob the bank. Unbeknownst to DAVE, FRED did not actually want to rob the bank. Rather, he was a member of a terrorist group who wanted to explode a hand grenade in a public place as an act of terror. When DAVE asked him to participate in the bank robbery, FRED saw an opportunity to fulfill his goal while having DAVE along as an unwitting armed backup.

The next day, DAVE and FRED approached the bank carrying handguns. FRED also had a hand grenade in his jacket pocket that DAVE did not know about. Just as they walked in through the bank's front door with their guns drawn, to DAVE's astonishment, the bank's security GUS saw DAVE and FRED with their guns drawn and shot his gun at FRED, killing him.

With what crimes may DAVE reasonably be charged? What defenses might DAVE assert? What crimes is DAVE likely to be convicted of?

Discuss.

Question 2

PAUL needed money, so he decided to plan a robbery at a convenience store. At the invitation of PAUL, PAUL met with ED and CONRAD who all agreed to the plan. CONRAD downloaded a map of the neighborhood, and the three of them planned their approach and getaway routes. ED was in fact an undercover police officer, investigating suspected thieves regarding possible criminal activities. ED did not intend to render assistance with the planned robbery.

They agreed they would all meet the next day in front of the store with ski masks and guns. CONRAD got to the store early with his ski mask and gun in his pocket, but he had a sudden change of heart. He decided he could not go through with the plan, turned around, threw his ski mask into the trash and walked away.

PAUL and ED met in front of the store. ED pretended to act as the lookout outside while PAUL went up to the cashier, showed the cashier the gun and demanded money. In fact, ED contacted other police officers and reported the activities of PAUL and CONRAD. PAUL was able to return to his home with the money, but was arrested shortly thereafter. CONRAD was also arrested.

What crimes may PAUL and CONRAD be charged with? What defenses may they assert? What charges are they likely to be convicted of?

Discuss.

Question 3

DENNIS went shopping with his girlfriend MARY. MARY's birthday was coming soon, and DENNIS told MARY that he wanted to buy her some birthday gifts. Unknown to MARY, DENNIS had recently obtained credit cards that he knew belonged to other persons. DENNIS and MARY went to the local outdoor shopping mall, where they went into several stores.

In Jane's Jewelry, Dennis bought a \$1,200 necklace for MARY. In Candy Castle, DENNIS bought a \$90 box of gourmet chocolates for MARY. In each of those purchases, DENNIS used a credit card that he knew belonged to someone else. Also, in Fancy Fashions, DENNIS bought MARY attempted to buy a \$400 party dress for MARY, but the store refused to accept the credit card DENNIS offered, because he could not provide ID matching the name on the credit card. DENNIS and MARY also entered Bree's Boutique and Susie's Shoes, where they looked at merchandise but did not attempt any purchases.

Although MARY was pleased with DENNIS for being willing to buy her those gifts, she knew that DENNIS had recently lost his job, and did not have much money at that time. At the time of the necklace purchase, she asked DENNIS about his being able to afford the necklace, and said she would be happy with a less expensive gift. DENNIS replied that things were looking up for him, and not to worry about the cost of the necklace.

DENNIS and MARY were eventually arrested. Discuss the crimes that they could be charged with, including potential multiple counts of the same charges, and discuss whether DENNIS and/or MARY would be likely to be convicted of those crimes.

CRIMINAL LAW FINAL 2024

Answer to Question 1

Solicitation

Solicitation is requesting, urging, or encouraging someone to commit a crime, with the intent that the solicitee commit the crime.

Here, the facts state that "DAVE suggested to FRED that they rob a bank." Thus, the prosecution will argue that DAVE urged FRED to commit a crime, with the specific intent that FRED commit the crime.

The defense would likely argue that since FRED did not intend to commit the robbery, the element of specific intent to commit the planned crime is absent.

However, since solicitation does not require that the solicitee agree to commit the crime, DAVE would likely be convicted of solicitation.

Conspiracy

Conspiracy is agreement by two or more persons to commit a crime, with the intent that the crime be committed. At common law, conspiracy was complete upon the agreement of the co-conspirators. However, the modern majority rule for conspiracy also requires some overt act in furtherance of the criminal objective by at least one of the conspirators.

Unilateral conspiracy. The modern majority rule provides for a conspiracy conviction where only one of the parties actually intended that the crime be committed, known as the unilateral approach.

Here, "FRED agreed and said that he would go along with DAVE when he tries to rob the bank." From DAVE's perspective, an agreement with FRED to commit robbery had occurred. However, DAVE did not specifically intend to commit robbery.

The prosecution will argue that conspiracy occurred when FRED agreed with DAVE to commit robbery.

The defense will argue that since FRED did not have the intent to commit the robbery, no conspiracy was formed.

At common law, and in a jurisdiction following the common law rule (bilateral approach), DAVE would not be guilty of conspiracy, since FRED did not specifically intend to commit robbery.

a jurisdiction following the modern majority rule (unilateral approach), given DAVE's specific intent to commit the robbery, DAVE could be found guilty of conspiracy if an overt in the furtherance of the conspiracy was completed.

ere, DAVE and FRED approached the bank carrying handguns. Thus, they both committed an overt act in furtherance of the criminal objective, at that point. Additionally, DAVE had the specific intent to complete the criminal objective. Therefore, Dave would likely be convicted of conspiracy under the modern majority conspiracy rule.

tempted Robbery

common law and under modern law, attempted robbery is an attempt to take the personal property of another from their person or presence, through the use of force or threat of force.

common law, an attempted robbery was committed if the actor came "dangerously close to completing the robbery, under the proximity test. Under modern trends, the majority of jurisdiction have abandoned the proximity test, and instead require that a "substantial step" toward the completion of the robbery be completed. A minority of modern jurisdictions continue to apply the common law conspiracy rules.

ere, Dave had his gun drawn, entered into the bank, and had the specific intent to commit a robbery, and the facts state that "DAVE suggested to FRED that they rob a bank." Thus, DAVE and FRED came dangerously close to the commission of a robbery.

erefore, Dave would likely be found guilty of attempted robbery under either common law or modern trend rules.

robbery

robbery is the trespassory taking and carrying away of the personal property of another from the person or their presence, by use of force or threats of force, with the intent to permanently deprive.

ere, as the facts do not state that DAVE or FRED actually took control and dominion of any personal property from the bank, nor satisfied the element of asportation.

erefore, DAVE cannot be found guilty of robbery.

assault

assault at common law was an attempted battery. Battery is the unlawful use of physical force against another person.

a minority of modern jurisdictions, assault can also be committed by placing another in fear of an imminent battery, even if the defendant did not intend to commit battery.

ere, the prosecution will argue that DAVE entered the bank with his gun drawn. Consequently, all persons in the bank could reasonably fear that they faced an imminent battery.

the defense will argue that DAVE's act of entering the bank with gun drawn did not constitute an attempted battery. DAVE's objective was apparently to announce the commencement of a robbery, and to have the gun ready in case resistance occurred.

Under common law and the modern majority rule (which follows common law), DAVE would likely not be found guilty of assault. However, in a jurisdiction following the modern minority rule, DAVE would likely be convicted of assault.

Burglary

Burglary at common law is the trespassory breaking and entering into the dwelling house of another, in the nighttime, with the intent to commit a felony therein. Modern jurisdictions have expanded burglary law to include entry into a building or vehicle with intent to commit felony or theft therein.

Here, Fred and Dave entered into the bank, with the specific intent to rob the bank. However, a bank is not a dwelling house. Furthermore, the facts state that Fred and Dave entered the bank "The next day." Therefore, Dave cannot be convicted of common law Burglary.

Under modern burglary law, DAVE clearly entered the bank with the intent to commit robbery.

Therefore, DAVE would be convicted of modern burglary, but not common law burglary.

Murder

Murder is the killing of another person with malice aforethought. The defendant's act must have been the actual and proximate cause of the victim's death. Here, FRED was killed.

Actual Cause: The defendant will be the actual cause of the victim's death if they would not have died but for the defendant's actions. Here, FRED would not have died, but for the attempted robbery. The requirement of actual cause is satisfied.

Proximate Cause: The defendant will be the indirect proximate cause of the victim's death if there was an intervening act by a third party, and the intervening act was foreseeable.

Here, the bank guard, GUS, made an effort to protect persons and property of the bank. Efforts to protect persons or property under those circumstances are quite foreseeable.

The prosecution would argue that the circumstances of entry with guns drawn would be likely to draw gunfire by a security guard.

The defense would likely argue that since neither DAVE nor FRED fired any shots, nor stated any threat to do so, the security guard's gunshot was an unforeseeable superseding act precluding a finding of proximate cause.

Most likely, the intervening act of Gus would most likely be found to be foreseeable. The entry with guns drawn was likely to draw deadly force in response, and was therefore foreseeable.

Felony Murder Rule: When a death is caused during the perpetration of an inherently dangerous, collateral felony, then the underlying felony will replace and satisfy the element of Malice.

Here, DAVE's actions would not subject him to a murder conviction in any way other than via the felony murder rule. Since DAVE was engaged in the act of attempted robbery with a deadly weapon, FRED's death occurred during the commission of an inherently dangerous felony. The prosecution would therefore argue that the felony murder rule applies.

The defense would likely argue that the felony murder rule does not apply when the decedent is one of the persons who committed the felony.

Under the Common Law, when a co-felon dies at the hands of another, the defendant will be found guilty of Felony Murder.

However, under the modern majority rule, a defendant will not be held guilty of felony murder when a co-felon dies at the hands of an innocent third party. Here, GUS is an innocent third party, who actually shot and killed FRED, the co-felon.

Thus, DAVE would be guilty under the felony murder rule at common law, and in a modern jurisdiction that follows the common law rule. DAVE would likely not be found guilty of felony murder under the modern majority rule.

Voluntary Manslaughter

Voluntary manslaughter involves a killing that results from the defendant's gross negligence or recklessness.

Here, the prosecution might argue that entering a bank with a gun drawn involves gross negligence or recklessness.

The defense would likely argue that DAVE should not be responsible under involuntary manslaughter rules because FRED's actions were just as reckless as those of DAVE, given that FRED also entered the bank with gun drawn. The basis for the crime of involuntary manslaughter has been described as showing a reckless indifference to the rights of others. Noakes v. Virginia, from our Criminal Law casebook. Since FRED's actions equaled the recklessness of DAVE's, it would seem to be a violation of Due Process to allow a conviction of involuntary manslaughter for DAVE in these circumstances.

Consequently, DAVE would likely not be found guilty of involuntary manslaughter.

CRIMINAL LAW FINAL 2024

Answer to Question 2

Below are the crimes that PAUL may be charged with.

Solicitation/Attempted Solicitation

At common law, as well as modern law, a person is guilty of solicitation to commit a crime if (1) enticing, encouraging or commanding of another person to commit a crime; (2) with the specific intent that the other person commits the crime.

Here, PAUL invited ED and CONRAD to meet to discuss a proposed robbery. The prosecution would likely argue that PAUL's invitation demonstrated the requisite intent as well as the necessary act.

The defense may try to assert that PAUL merely discussed his intention to rob the store, and the others were told about that in case they wanted to come and merely watch. However, the fact do not seem to support this assertion.

PAUL would likely be convicted of solicitation because of his proposal to ED and CONRAD to participate in a robbery.

Conspiracy

At common law, conspiracy requires (i) an agreement, express or implied, to accomplish an unlawful objective or to accomplish a lawful objective with unlawful means, (ii) an intent to agree to commit conspiracy, (iii) an intent to achieve the unlawful objective. No overt act is required for conspiracy to be complete under common law.

The majority of modern jurisdictions add the element of an overt act in furtherance of the conspiracy, done by any of the conspirators. The overt act is satisfied even if the act is preparatory in nature.

Here, PAUL had a meeting with ED and CONRAD to discuss the proposed robbery. PAUL and CONRAD agreed to the plan, meaning they agreed to commit the conspiracy. The fact that ED did not actually intend to agree to assist with the robbery did not prevent a conspiracy being formed by PAUL and CONRAD. The unlawful objective is to rob the store.

Under modern law trends, a conspiracy also requires the commission of an overt act, done by any of the conspirators, which can be legal or illegal, in furtherance of the conspiracy to complete the crime of conspiracy.

Here, the overt acts are downloading a map of the neighborhood, as well as the actions done to complete the robbery.

The defense may try to assert that PAUL merely discussed his intention to rob the store, and the others were told about that in case they wanted to come and merely watch. However, the facts state that "they all agreed to the plan", strongly suggesting that at least CONRAD agreed to be involved with the robbery.

PAUL will likely be convicted of conspiracy to commit robbery.

Robbery

At common law, as well as modern law, robbery is a taking of personal property of another from the other's person or presence, by force or threats of immediate physical force against the victim, with the intent to permanently deprive the victim of the property.

Here, the money belongs to the bank while the cashier is the custodian. It is property of another. PAUL took the money in the presence of the cashier. The requirement of using force or threats of immediate death is met since PAUL showed the cashier the gun, a deadly weapon, when he demanded the money. The intent is to permanently deprive the store and the cashier of the money since this is a robbery and there are no facts to indicate the money will be returned at a later time.

The facts do not provide any viable basis for a defense against a robbery charge against PAUL.

Hence, PAUL would almost certainly be convicted of robbery under both common law and modern law.

Assault

Assault at common law was an attempted battery. Battery is the unlawful use of physical force against another person.

In a minority of modern jurisdictions, assault can also be committed by placing another in fear of an imminent battery, even if the defendant did not intend to commit battery.

Here, PAUL caused a frightening act by showing the gun to the teller and demanded money. The prosecution would likely assert that under the modern minority rule, an assault were committed.

However, under the common law and modern majority rules, the mere displaying of a gun coupled with a demand for money would likely NOT constitute an attempted battery, and therefore PAUL would likely NOT be convicted of assault unless the jurisdiction follows the modern minority rule.

Below are the crimes that CONRAD can be charged with:

Conspiracy

Conspiracy is defined above.

Here, the prosecution can argue that CONRAD agreed to the robbery plan when he met with ED and PAUL. Under the common law rule, that agreement (at least with PAUL) was sufficient to establish the crime of conspiracy.

As to an overt act in the furtherance of the conspiracy under the modern majority rule, the prosecution would be able to show that he downloaded a map of the area of the bank to assist with planning. He also went to the bank early with his ski mask and gun in his pocket. The prosecution would argue that those acts are sufficient for an overt act.

The defense may attempt to argue that the above-described acts were mere preparation, but preparatory acts are sufficient to establish an overt act for conspiracy purposes.

A defense the defense may raise is abandonment. One who renounces their involvement in a conspiracy under a modern MINORITY rule can avoid culpability for crimes committed by co-conspirators after the abandonment when they take a voluntary action to both remove themselves from the conspiracy and act to thwart it. However, at common law and under the modern MAJORITY rule, abandonment is never a defense to the crime of conspiracy.

Here, CONRAD voluntarily gives up the idea to go through with the plan. He threw his ski mask into the trash and walked away. However, he did nothing else to thwart the act. He did not notify the other co-conspirators nor law enforcement to prevent the happening of a crime.

Hence, CONRAD's defense of abandonment is not viable, even under the modern minority rule, and he will likely be found guilty of conspiracy.

Attempted Robbery

At common law, an attempted robbery was committed if the actor came "dangerously close to completing the robbery, under the proximity test. Under modern trends, the majority of jurisdictions have abandoned the proximity test, and instead require that a "substantial step" toward the completion of the robbery be completed. A minority of modern jurisdictions continue to apply the common law conspiracy rules.

Here, the prosecution would likely argue that CONRAD's downloading of the area map, and bringing a ski mask and gun to the area near the store constituted his coming "dangerously close" to committing the robbery. Clearly, CONRAD was in close proximity to the store. Further, the prosecution would likely argue that those acts would also satisfy the "substantial step" element for the modern majority conspiracy rule.

The defense would likely argue that since CONRAD never went inside the store, CONRAD could not be considered to have come "dangerously close" to committing the robbery. A store robbery can hardly be accomplished in the absence of entry into the store. Further, the defense would argue that the "substantial step" element was not met because CONRAD's actions all constituted preparations, not the commencement of the robbery.

Most likely, CONRAD would not be convicted of attempted robbery under the common law rule, because despite his preparations he never entered the store. Further, his decision to abandon the effort was not the result of interference by other persons or circumstances. However, under the modern law majority rule, CONRAD would likely be convicted, since at a minimum his approaching the store with a gun and a ski mask would likely be considered a "substantial step" toward the completion of the robbery.

Robbery

The crime of robbery is defined above.

The prosecution could argue that CONRAD is guilty of robbery as a co-conspirator. Conspirators can be found guilty of the intended crime, as well as all other foreseeable crimes committed by co-conspirators in the further of the conspiracy. Here, CONRAD did agree to participate in the robbery.

The defense would likely argue that CONRAD had abandoned the conspiracy prior to the commission of the robbery, and did not provide any assistance at the scene of the robbery. The defense would therefore argue that CONRAD should not be found guilty for crimes committed by his co-conspirators after his abandonment of the conspiracy.

While CONRAD will likely be found guilty of conspiracy, as discussed above, the question might be a closer call regarding accomplice liability. However, it would appear from the stated facts that in participating in the planning of the robbery, CONRAD did act as an accomplice.

CONRAD would therefore likely be found guilty of robbery via accomplice liability.

CRIMINAL LAW FINAL 2024

Answer to Question 3

CHARGES AGAINST DENNIS

Receiving Stolen Property

Receiving stolen property is the receipt of possession or control of personal property of property known or reasonably should have been known to be stolen. The elements are the same at common law this crime and under modern law.

Here, the facts indicate that DENNIS knew the credit cards belonged to other people.

The defense might argue that the credit cards could have been given to DENNIS to use with their permission. However, this seems unlikely, and is not supported by the facts.

Therefore, he would likely be convicted of receiving stolen property.

Burglary

Under common law, is the trespassory breaking and entering into the dwelling house of another, in the nighttime, with the intent to commit a felony therein. Modern jurisdictions have expanded burglary law to include entry into a building or vehicle with intent to commit felony or theft therein.

Under the common law burglary rule, neither DENNIS nor MARY would be convicted of burglary, since none of the buildings entered were residences, nor was there a "breaking".

Here, the prosecution would likely argue that DENNIS and MARY committed 5 burglaries, one for each store. In support of that, the intent to commit theft is indicated by DENNIS using and attempting to use stolen credit cards for the purchases and attempted purchase. In particular, that fact that when the stolen credit card offered for the attempted purchase was refused in Fancy Fashions, DENNIS did not provide any legitimate means of payments, such as cash or check.

The defense might argue that with every shopping trip a purchase (or attempted purchase) is by no means certain. Significantly, the facts state that this shopping trip preceded MARY's birthday. Thus, the defense could argue that DENNIS intended to get gift ideas during this shopping trip, and the purchases could be made later.

The prosecution could respond that DENNIS had lost his job and had little money at the time. In addition, DENNIS did make purchases, and attempted another purchase, during that shopping trip. That would indicate the intent was not merely to get gift ideas.

The defense would likely argue that at most, only 3 counts of burglary would be appropriate, since no purchases were attempted at Bree's Boutique and Susie's Shoes.

The prosecution would likely respond that the stated purpose of the trip was for birthday gifts for MARY, and the entry into each of the stores was to attempt to purchase items with stolen credit cards. The fact that no desirable items were found in some stores did not eradicate the intent to try to obtain merchandise therein with a stolen credit card.

DENNIS would likely be convicted of 5 counts of burglary.

Larceny

Under both common law and modern law, larceny is the trespassory taking and carrying away of the personal property of another with the intent to permanently deprive or steal.

Here, the prosecution may argue that 3 counts of larceny occurred, in the 2 fraudulent purchases and in the attempted purchase. The elements are easily met with the 2 fraudulent purchases. As to the attempted purchase, the prosecution may argue that the item was possessed, and moved (to the cash register area).

The defense would likely argue that since the carrying was not toward an exit from the store, the asportation element was not satisfied.

Most likely, the attempted purchase will not be found to be larceny, so DENNIS would be convicted only of 2 counts of larceny.

Attempted Larceny

At common law, an attempted larceny was committed if the actor came "dangerously close" to completing the larceny, under the proximity test. Under modern trends, the majority of jurisdiction have abandoned the proximity test, and instead require that a "substantial step" toward the completion of the larceny be completed. A minority of modern jurisdictions continue to apply the common law conspiracy rules.

Here, the attempted purchase in Fancy Fashions would likely be asserted to constitute attempted larceny. The prosecution would argue that the presentation of the stolen credit card for the purchase sufficed for either the proximity test or the substantial step test.

The defense might argue that since the party dress was never taken toward any of the store exits, larceny was not "dangerously close" to completion.

The prosecution could respond that the presentation of the stolen credit card for the purchase should be considered to be "dangerously close" to completion of the larceny, as opposed to merely preparatory acts, such as viewing merchandise.

As to Bree's Boutique and Susie's Shoes, since no items are stated as having been selected for potential fraudulent purchase, the proximity test most likely would not be met. Under the substantial step test, the prosecution would have a stronger argument, but the fact that no items therein were identified for intended acquisition, it still seems insufficient.

1)

Question 1:

Dave

Conspiracy to commit robbery: Is Dave guilty of conspiracy to rob the bank?

Under common law, a conspiracy has formed when the agreement between two parties with the intent to commit the crime has been made.

The prosecution will argue that Dave and Fred agreed to rob the bank, and both of them acted accordingly, making Dave guilty of common law conspiracy.

However, the defense will argue that because Fred did not have the requisite mens rea to rob the bank, where both parties must intend to commit the crime, he is not guilty of common law conspiracy. They would likely argue that there could not have been a conspiracy, because all Fred intended to do was explode a hand grenade in public, which is not a robbery, and therefore not what Dave was intending to do that day.

Under modern trends, there is a unilateral mens rea that only requires one of the parties to intend to commit the crime, and the conspiracy has formed when one or more of the parties engages in an overt act to further the conspiracy.

The prosecution will argue that Dave satisfied the requisite unilateral mens rea by intending to rob the bank with Fred and coming to an agreement. They would also argue that the overt act necessary to complete the formation of the conspiracy was satisfied when Dave acquired a handgun and showed up at the bank.

The defense would likely not be able to make an effective defense with this fact pattern.

It is likely that under Common Law Dave is not guilty of conspiracy to commit robbery, but under modern trends, it is likely that he would be convicted.

Attempted Robbery: Is Dave guilty of attempted robbery?

Under the common law, an attempt was completed when the defendant intends to commit a crime and satisfies the proximity test, where the defendant came "dangerously close" to the completion of the crime.

The prosecution would likely argue that Dave got dangerously close to robbing the bank, as he and Fred walked arrived at the bank, and that because the only things that stopped, or would have stopped Dave from

robbing the bank, was the fact that Gus the security guard shot Fred, and that Fred would have potentially killed or injured Dave with the hand grenade, meaning that Dave got dangerously close to committing the crime.

The Defense would likely not have very much to argue in Dave's defense.

Under modern trends, however, a defendant has completed his attempt, when he takes a substantial step towards the completion of the crime. A substantial step must be more than mere preparation.

The prosecution would likely argue that Dave's bringing of a handgun to the bank, and his act of walking into the bank with his gun drawn more than constituted a substantial step towards robbing the bank greater than mere preparation.

The defense would likely not have very much to argue in Dave's defense.

It is likely that both under common law and modern trends, Dave would be found guilty of attempted robbery.

Accomplice to Attempted Murder: Is Dave an accomplice to Fred's Attempted Murder?

For attempt, see rule above.

Under Common law, there are 4 types of complicity. One of the levels is principal in the second-degree, where a defendant aids, encourages, and intends for the principal in the 1st degree to commit the crime, and that the defendant must be present when the crime is committed.

Under modern trends, the 4 tiered complicity has been replaced by Principal, accomplice, and accessory after the fact.

The prosecution may argue that Fred was an accomplice to Fred's attempted murder of the people in the bank, as by both common law modern trends, it is likely that Fred was guilty of attempted murder due to the fact that he took a substantial step towards, and was dangerously close to, setting off his grenade in the bank.

The defense will likely argue that it was not foreseeable that Fred would attempt to kill the people in the bank, as doing so may injure both Dave and Fred, which would not assist in the furthering of the robbery.

Additionally, Dave lacked the requisite mens rea of intending to assist the principal--Dave--with committing the crime, as he had no knowledge of the grenade, or Fred's plans to engage in terrorism.

Not really an issue, since Dave did not have specific intent to kill, and was unaware of Fred's secret intent.

It is unlikely that under common law, or modern trends, that Dave would be found guilty as an accomplice to attempted murder.

Felony Murder: Is Dave guilty of Felony Murder

To be convicted of felony murder, someone must have died during the commission of an inherently dangerous felony, with causation, while the crime was still in progress, meaning before the defendant reached a zone of relative safety.

Causation is governed by the but for test to determine actual cause, where it must be that "but for" the defendant's actions the crime would not have occurred. The second test is for proximate cause determined by the substantial factor test, where the defendant's conduct must have been a substantial factor in causing the harm. A substantial factor is anything more than a remote factor.

The prosecution would likely argue that because Fred died during the course of committing a robbery (and perhaps an aggravated assault), an inherently dangerous felony, he is likely guilty of felony murder. Additionally, they would argue that because Fred was killed shortly after the two of them had walked into the bank with their guns drawn, that the crime was still in progress, as Dave was not anywhere close to a zone of relative safety.

The defense would likely argue that Dave being killed by a security officer was not foreseeable, and that there is no causation between Dave's actions and Fred's death, because it was Gus the security guard that shot and killed Fred.

The prosecution would likely counter that based on the but for and substantial factor tests, Fred would have still been killed, as Fred would likely not have been in the bank but for the Dave's plan to rob it, and that Dave's plan to rob the bank was a substantial factor in causing Fred's death, especially since being responded to with deadly force by security personnel is a foreseeable consequence of walking into a bank with guns drawn.

3 *Missed issue - Does F/M rule apply when a co-felon is killed?*
It is likely that Dave is guilty of Felony Murder. *Common law = yes, modern majority =*

Aggravated Assault: Is Dave guilty of aggravated assault?

One definition of assault is an attempted battery. A battery is the intentional application of harmful force or offensive contact.

The frightening assault definition of assault is: creating a reasonable apprehension within the victim that he will suffer great bodily injury or offensive contact. > *This is a modern minority rule.*

An assault is upgraded to aggravated assault, when the victim is a police officer, child, elderly person, or a deadly weapon is used in the assault.

The prosecution would likely argue that both the frightening assault and attempted battery elements of assault were satisfied through the fact that Dave walked into a bank with a drawn handgun. A handgun is a deadly weapon, justifying the upgrade of the charge to aggravated assault. Additionally, it is likely that the apprehension of great bodily harm in the would have been created in the victims, namely the patrons of the bank and Gus the security guard. They would also argue that it is unlikely that there is any purpose to Dave walking into the bank with a drawn handgun other than to rob the place. Another bit of evidence that would be used is the fact that Gus felt the need to draw his own gun and shoot and kill Fred, meaning that Gus likely had a reasonable apprehension that he would suffer deadly force, and felt the need to respond in kind.

The Defense would likely argue that there was no conduct of Dave's that constituted an attempted battery. They would also contend that since there was no specific action undertaken by Dave to threaten either the Gus or the patrons in the bank, other than the two men walking into the bank with guns, meaning that the standard of frightening assault wasn't met.

It is unlikely that Dave would be convicted of aggravated assault in an attempted-battery jurisdiction. However, in a frightening assault jurisdiction, he would be convicted.

-3 **Solicitation: Is Dave guilty of soliciting Fred to rob the bank?** > *Discussion needed*

Burglary: is Dave guilty of burglary?

Under common law, burglary was the breaking into a residence at night with the intent to commit a felony. Under modern trends, burglary is the crossing of a threshold of a structure with the intent to commit a felony (or misdemeanor theft), or remaining within a structure after the commission of a felony or misdemeanor theft.

The prosecution would argue that Dave entered the bank with the intention of committing an armed robbery. The fact pattern states that both men walked in through the front door, and therefore crossed the bank's threshold. Since the robbery had been planned by Dave, it is unlikely that he had the intent to do anything in the bank, other than commit a robbery, which is a felony.

The Defense would likely not have much of a defense to the charge of burglary. *under modern law.*

Under modern trends, it is likely that Dave would be convicted of burglary. However, under common law, it is unlikely that he would be convicted, as there was no breaking and entering in the bank, as the entry occurred during business hours, and the bank was not a residence.

Missed issues:

- 3 Robbery
- 5 Murder (separate from F/M)
- 3 Involuntary Manslaughter

2)

Question 2:

Paul

Robbery: Is Paul Guilty of Robbery?

To be guilty of robbery, a defendant must have taken the property of the victim with the intent to permanently deprive using force or the threat of force.

The prosecution would likely argue that because Paul went up to the cashier, showed the man his gun, and demanded the money, Paul is guilty of robbery. Paul took the money and went home with it before he was arrested as a result of Ed's sting operation. Using a gun likely constitutes the threat of force, as a gun is a deadly weapon. The money was taken as part of the robbery, meaning that he likely intended to permanently deprive the store owner of it.

The defense would likely not have a good defense to the charge of robbery.

It is likely that Paul is guilty of robbery.

Burglary: Is Paul Guilty of burglary?

Under common law, burglary was the breaking into a residence at night with the intent to commit a felony. Under modern trends, burglary is the crossing of a threshold of a structure with the intent to commit a felony (or misdemeanor theft), or remaining within a structure after the commission of a felony or misdemeanor theft.

The prosecution would likely argue that Paul entered the structure of the store, intending to commit a robbery, which is felony, and that since Paul made good on the commission of this robbery, that there is no way that it can be argued that he did not intend to commit a felony within the store.

The defense would likely not be able to argue a sufficient defense under modern trends, but under common law, they would argue that since there is no evidence Paul broke into the store, he is not guilty.

It is likely that under modern trends, Paul would be convicted of burglary. However, under common law, it is unlikely that he would be convicted.

Aggravated Assault: Is Paul guilty of Aggravated Assault

One definition of assault is an attempted battery. A battery is the intentional application of harmful force or offensive contact.

The frightening assault definition of assault is: creating a reasonable apprehension within the victim that he will suffer great bodily injury or offensive contact. > This is only a modern minority rule.

An assault is upgraded to aggravated assault, when the victim is a police officer, child, elderly person, or a deadly weapon is used in the assault.

The prosecution would likely argue that Paul is guilty of assault, because he created the reasonable apprehension within the cashier, that he would be shot (which any reasonable person would consider to be great bodily harm or offensive contact) unless he handed over the money. Additionally, a gun is a deadly weapon, upgrading the charge to one of aggravated assault. They would also argue that there is likely no reasonable explanation to Paul's conduct of showing the cashier the gun and subsequently asking for the money, other than to make it clear that he was threatening the cashier.

The defense would likely argue that Paul did not specifically say that he would shoot the cashier if he did not give him the money, nor did he specifically point the gun at the cashier, he only showed it to him. They would also say that there is no evidence of an attempted battery on the cashier, as all Paul did was show the cashier the gun, and did not attempt to strike him with it or shoot him.

It is likely that in a frightening assault jurisdiction, Paul would be convicted of aggravated assault. However, in an attempted battery jurisdiction, he would not be convicted.

Conspiracy to commit robbery: Is Paul guilty of conspiracy to commit robbery and burglary?

Under common law, a conspiracy has formed when the agreement between two parties with the intent to commit the crime has been made.

The prosecution would likely argue that the conspiracy was likely formed when Conrad, Ed, and Paul all agreed to the robbery, as they all intended to commit the robbery. They would also say that it doesn't matter that Ed had no mens rea with regards to the robbery, as two parties (Conrad and Paul) still intended to plan and commit the robbery.

The defense would likely argue that because one of the parties--Ed who was an undercover police officer--did not intend to commit the crime, there was no conspiracy under common law.

Under modern trends, there is a unilateral mens rea that only requires one of the parties to intend to commit the crime, and the conspiracy has formed when one or more of the parties engages in an overt act to further the conspiracy.

The prosecution would argue that the conspiracy was formed when the three parties agreed to commit and plan the robbery, and Conrad subsequently downloaded a map of the neighborhood, which constituted one of the parties performing an overt act in furtherance of the conspiracy.

The defense would likely not have very much to argue as to the defense against the charge of conspiracy to commit robbery (under modern trends).

It is likely that under both the common law and modern trends, that Paul is guilty of conspiracy to commit robbery and burglary.

Conrad

Attempted Robbery and Burglary: Is Conrad guilty of attempted robbery and burglary?

Under the common law, an attempt was completed when the defendant intends to commit a crime and satisfies the proximity test, where the defendant came "dangerously close" to the completion of the crime.

The prosecution would likely argue that because Conrad arrived early at the store with the ski mask and gun in his pocket, he came dangerously close to the commission of the burglary and the robbery that was planned by the three men.

The defense would likely argue that because he did not enter the store or wait for the arrival of the two men who were necessary for the start of the planned robbery, that he did not in fact, come "dangerously close" to the completion of either crime.

Under modern trends, however, a defendant has completed his attempt, when he takes a substantial step towards the completion of the crime. A substantial step must be more than mere preparation.

The prosecution would likely argue that Conrad's acquiring of a gun and ski mask, and his arrival at the store that the men had agreed to rob constituted more than enough "substantial steps" towards the commission of a robbery and a burglary.

The defense would likely not have very much to argue with regards to attempted burglary and robbery under modern trends.

Abandonment: could Conrad use the defense of Abandonment to the charge of attempted Burglary and Robbery?

It is unlikely that under either common law or modern trends, the fact that Conrad abandoned the crimes before they completed could be used, as under both modern trends and common law, he is likely guilty of the attempt.

It is likely that under both common law and modern trends, that Conrad is guilty of attempted burglary and robbery.

Conspiracy to Commit Robbery and Burglary: Is Conrad guilty of conspiracy with regard to the two crimes.

for the rule on common law conspiracy, see above rule

The prosecution would likely argue that because there were two members of the conspiracy that intended and agreed to commit the crime, (Conrad and Paul) that the conspiracy was formed.

The defense: would likely argue that because one of the members did not intend to commit the crime, there was no conspiracy.

for the rule on conspiracy under modern trends, see above rule

The prosecution would likely argue that Conrad's downloading of the neighbor hood map, and his arrival at the store with both a gun and a ski mask in his pockets satisfied the overt act required for conspiracy under modern trends.

The defense would likely not have much of a defense for the charge of conspiracy under modern trends.

Abandonment: Can Conrad use abandonment as a defense to conspiracy?

In jurisdictions that allow abandonment as a defense, the defendant must have taken substantial steps to sabotage the conspiracy, such as alerting and aiding law enforcement to the other conspirators.

The prosecution would likely argue that Conrad did nothing to sabotage the conspiracy as he did not contact law enforcement about it, and merely left the scene before the crime was completed.

The defense would likely not be able to argue that Conrad had taken steps to sabotage the conspiracy.

It is likely that under both modern trends and common law, that Conrad is guilty of conspiracy to commit burglary and robbery, even in a jurisdiction that allows abandonment as a defense.

Accomplice to robbery, assault, and burglary: Is Conrad an accomplice to Paul's robbery, assault and burglary?

Under common law there are 4 classes of accomplice liability. One of them is accessory before the fact. An accessory before the fact aids, encourages, and helps the defendant before the commission of the crime, and is not at the scene of the crime when it takes place.

The prosecution would likely argue that because Conrad aided Paul through his agreement to rob the store (signaling intent that Paul rob the store) and his downloading of the neighborhood map (aiding in Paul's robbing of the store), that he is accessory before the fact.

The defense would likely not have much to say regarding Paul's complicity to robbery and burglary, but they would argue that Paul's assault of the cashier was not planned nor encouraged, and he is therefore not liable as an accomplice to that specific crime.

The prosecution would likely counter, saying that an assault is a foreseeable consequence of an armed robbery, and that robbery is not possible without the use of or threat of force (assault and battery).

It is likely that under common law, Conrad is an accessory before the fact to robbery, assault, and burglary, but he is not an accomplice under modern trends, as they have abolished the class of accessory before the fact.

-6 Incorrect. The modern accomplice law changed from 4 types to 2 types, but is very much in place

Missed issues:

Paul

-3 solicitation

Conrad

No missed issues. Very good!

Very good answer. Just one significant error.

3)

Question 3:

Dennis

Larceny: Is Dennis guilty of Larceny? How many counts?

Larceny is the taking and carrying away, by trespass, of the victim's tangible property with the intention to permanently deprive the victim of said property.

The prosecution would likely argue Dennis is guilty of three counts of larceny. The first count of larceny would be when Dennis acquire the other person's credit card, as there is nothing in the fact pattern to suggest that Dennis was given possession of the card by its rightful owner. In this case, the trespass and carrying away occurred whenever Dennis stole the card. The other two counts would be at Jane's Jewelry and Candy Castle, where the trespass and taking away all occurred the instant that Dennis made the transaction for the necklace at JJ and the chocolates at CC, as at the point of transaction, the funds are transferred from the credit card company to the store, and that money has been "converted" when the store received it when used in the purchase.

The defense would likely not have much of a defense to the charges of larceny.

It is likely that Dennis is guilty of three counts of larceny.

Burglary: Is Dennis guilty of Burglary? How many counts?

Under common law, burglary was the breaking into a residence at night with the intent to commit a felony. Under modern trends, burglary is the crossing of a threshold of a structure with the intent to commit a felony (or misdemeanor theft), or remaining within a structure after the commission of a felony or misdemeanor theft.

The prosecution would likely argue that Dennis is guilty of 5 counts of burglary in all 5 stores: JJ, CC, Bree's Boutique, Susie's Shoes, and Fancy Fashions. Because Dennis entered the stores, he crossed the threshold of the structures. Dennis intended to commit larceny in all 5 stores, as was in the mall that day specifically to commit more larceny, which is a felony. Because the mall was outdoor, each time he entered a store constituted the entering of a new structure's threshold.

The defense would argue that in BB and SS, there was no attempted purchase made by Dennis, so therefore he did not enter those two stores with the intent to commit larceny.

It is likely that under modern trends (but not common law) that Dennis is guilty of five counts of burglary.

Attempted Larceny: Is Dennis guilty of attempted larceny? How many counts

Under the common law, an attempt was completed when the defendant intends to commit a crime and satisfies the proximity test, where the defendant came "dangerously close" to the completion of the crime.

The prosecution would argue that because Dennis entered all three stores (FF, BB, and SS) where he did not make a purchase while in possession of the stolen credit card, he came dangerously close to committing larceny in all of them, meaning he is guilty of 3 counts.

The defense would likely argue that because Dennis did not attempt to purchase anything in BB and SS, that he did not come "dangerously close" to the commission of larceny, and is therefore only guilty of one count of attempted larceny in SS.

Under modern trends, however, a defendant has completed his attempt, when he takes a substantial step towards the completion of the crime. A substantial step must be more than mere preparation.

The prosecution would argue that Dennis' procurement of the stolen credit card, and his entry while possessing it into all three stores (BB, SS, and FF) constitutes a substantial step greater than mere preparation in the furtherance of the act of larceny, meaning that Dennis is guilty of 3 counts of attempted larceny.

The defense would likely argue that the substantial step necessary to satisfy the substantial step test is the attempt of a purchase, and not merely the entering into the stores. This would mean that Dennis is only guilty of one count of attempted Larceny.

It is likely that under both common law and modern trends, Dennis is guilty of 3 counts of attempted larceny.

Mary

Receipt of Stolen Property: Is Mary guilty of receiving stolen property?

For a defendant to be guilty of receipt of stolen property, he must have received items that he knows are stolen, or should have known are stolen with the intention of permanently depriving the rightful owner of his interest in said property.

overstatement

The prosecution would likely argue that when Mary received that chocolates and necklace (which would likely not be in dispute) that she knew or should have known that the credit card that Dennis used to purchase them was stolen, as Dennis had lost his job, and he had refused to produce ID for the credit card he was using while he was attempting to buy the dress in FF, and that Dennis' vague explanation about "things looking up" for him was not a good enough one to isolate Mary from knowledge the card was stolen and therefore criminal liability. They would argue that because of this, Mary is likely guilty of 2 counts of receiving stolen property.

The defense would likely argue that because Dennis used a credit card to purchase the necklace and gourmet chocolates, that the actual item that was subject to theft or conversion was the money used to pay for those two items, and not the items in question, meaning that she is the legal owner of the two items, which were therefore not stolen. They may also argue that Mary had no reason to believe that the credit card used by Dennis was stolen, and that Dennis' explanation of things "looking up" was sufficient despite Dennis' unemployment, because for all Mary knew, Dennis was just getting into an extraordinary amount of debt on her behalf to make the purchases. Under this interpretation of the facts, Mary would be guilty of 0 counts of receiving stolen property.

1 Not clear beyond a reasonable doubt that Mary actually received any of the gifts for her future birthday
It is unlikely that Mary would be convicted of any counts of receiving stolen property.

Accomplice to Larceny: Could Mary be held criminally liable as an accomplice to larceny? How many Counts?

-1 Prosecution argument? Mary knew Dennis was in bad financial shape...
It is unlikely that Mary could be held criminally liable as an accomplice to any counts of larceny, because she had no knowledge that the credit cards were stolen, and therefore did not have the requisite mens rea for accomplice liability.

Missed issues:

END OF EXAM

Dennis

- 4 Receiving Stolen Property

Mary

- 5 Burglary

- 5 Attempted Larceny