

Monterey College of Law
Criminal Law & Procedure

Midterm Examination

FALL 2023

Professor S. Haas

General Instructions:

Answer Two (2) Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

QUESTION 1

Marleen and Harry had been married for 10 years when Marleen became unhappy with their relationship. Harry was a police officer and had to work long shifts. Marleen hated to be home alone at night. She soon struck up a friendship with another police officer, Jerry, who worked in the same department as Harry.

Despite Jerry also working long shifts, Jerry spent a lot of time texting and calling Marleen during his shifts so she felt like she was important to him. Their friendship was very strong but Marleen did not tell Harry about her new friend.

One night, Harry, feeling guilty about always having to work nights, decided to swing by his house at 10pm to surprise Marleen with a bouquet of roses.

When he approached his front door he heard Marleen's voice coming from inside the house. He stopped at the front door and listened with his ear to the door. Marleen was unaware he was there. Harry heard Marleen talking on the phone to another man. Harry became incensed! He never went in the house; instead he threw the roses in the trash and sped away.

Harry finished his work shift and came home the next morning. He obtained Marleen's cell phone while she was taking a shower and searched the contents. He found the phone number that had called Marleen the night before and wrote it down in a notebook.

The next night at work, Harry used his police database to search the phone number. He found that the phone number was registered to Jerry. He also obtained Jerry's home address in the search.

A week later, Harry snuck over to Jerry's house in the middle of the night and cut the breaks to his police cruiser.

In the morning, Jerry was getting ready for work when he received a phone call from his chief. His chief told him that he was getting a new rookie partner that morning. The Rookie just happened to live a couple houses down the road from Jerry so the chief instructed the two to leave in Jerry's car from his house instead of meeting each other at the station.

The Rookie and Jerry got into Jerry's police cruiser and set off for work. Jerry was not paying attention to the road as he was very focused on giving the Rookie a good introduction to the force. He also forgot to remind the Rookie to buckle his seat belt. As they drove slowly down the road, a squirrel darted into the road. Jerry slammed on his breaks, but nothing happened because the breaks didn't work. Panicked, Jerry turned sharply and the police cruiser crashed into a large oak tree.

Unfortunately, the Rookie died upon impact. Jerry slipped into a coma.

Jerry spent two years in a coma on life support because he had no family to let the hospital know his last wishes. During those two years, Harry and Marleen's relationship got worse and they ended up in couples counseling.

During a very heated counseling session Harry admitted to finding out about the phone calls with Jerry and cutting Jerry's breaks out of jealousy. Marleen was shocked at the admission and was overcome with guilt. At the same time, Marleen was flattered that Harry had become so jealous over her and she found this very romantic. Marleen decided to do anything to save the marriage. Knowing that if Jerry ever regained consciousness, he might implicate Harry, she contacted the hospital and told them she was Jerry's only living relative and she wanted the hospital to pull the plug on the life support.

The hospital was relieved that a relative had finally come forward to direct them on what to do with Jerry's situation. They took Jerry off life support and two weeks later he died.

1. What, if any, crimes could Marleen be charged with?
2. What, if any, crimes could Harry be charged with?
3. What, if any, crimes could Jerry have been charged with if he had lived?
4. Discuss any possible defenses to the above crimes.

Question 2

Dante has been struggling to pay his bills lately. He recently lost his job as an ER doctor due to some malpractice claims. Dante went out to lunch with his friends Fred and Natacha. At lunch, he told his friends Fred and Natacha that he has been struggling to find a new job and pay his bills. Fred said that he was struggling as well and recommended that they break into the house of Kevan, the doctor who reported Dante causing him to lose his job. Dante and Natacha laughed and told Fred that they would see him next week.

Later that night, Dante thought about what Fred had said and called him. When he called him, Dante told Fred that he wants to break into Kevan's house and meet up to discuss how to do it. After Dante called Fred, he called Natacha and told her about the plan to meet up. Natacha said that she did not want anything to do with the meeting and hung up.

The next day, Dante and Fred met up and discussed how they would break into the house and what supplies they would need to buy. Dante and Fred then went to the hardware store to buy a glass cutter and gloves. That night, Dante picked up Fred and they drove to Kevan's house.

Kevan was not home and they used the glass cutter to make a hole in a window. Dante and Fred entered the house and took jewelry, \$1,000.00 in cash, and a laptop. They placed the items in a backpack, and continued searching the house.

Unbeknownst to Dante and Fred, Kevan's sister Ashley, who was visiting for the weekend, was actually sleeping in the guest room. Awoken by noises, she walked out and confronted Dante and Fred, who then ran out the front door and accidentally left the backpack. Ashley was quite shaken by the incident, started carrying a pocket knife with her and was later diagnosed with PTSD. Dante and Fred remain on the run.

A few months later, Ashley was in an underground parking lot at her workplace, when she heard someone walking behind her, she started walking faster, and believed the individual behind her also picked up speed. Without provocation, Ashley took out her knife, turned around and attacked the individual by stabbing them in the eye.

As soon as she finished stabbing, she realized it was the new employee at the office, she panicked and left the garage. Immediately after she was apprehended, she stated, "I thought it was Dante behind me."

What crimes can be charged against Dante, Fred, Natacha, and Ashley?

What defenses, if any, can they each raise?

What is the likely result?

Answer using California and common law only.

MCL-Criminal Law & Procedure-Fall 2023-Prof. S. Haas

Question Outline – Q1

Marleen's crimes:

1. Homicide
 - a. Malice, First Degree, Purposely – Plan to kill Jerry by pretending to be his only relative to save her marriage and save her husband from prosecution.
 - b. Accomplice liability: She decided to get rid of Jerry to help her husband avoid prosecution.
 - i. No indication of agreement between Harry and Marleen.
 - ii. Accessory after the fact – to help Jerry escape prosecution
 - iii. Marleen is a principal since she herself committed the act of calling the hospital to get Jerry off life support.
 - c. Marleen could argue that Jerry was already brain dead and it was his last wish

Harry's crimes:

1. Homicide – Jerry's death:
 - a. Malice aforethought/First Degree/Purposely: Harry purposely cut Jerry's Brakes after finding out that Marleen was talking to him the night before.
 - b. CDHL – Cutting a police cruiser's brake line, knowing the danger it poses to the officer since officers are often engaged in high speed maneuvers.
 - c. Voluntary Manslaughter: HOP – Acted due to provocation after discovery Jerry may be having an affair with Marleen.
 - i. Time to cool off – Did not do anything on the night of the call, waited a week after finding Jerry's address and phone number.
 - d. Involuntary Manslaughter – Recklessness in cutting Jerry's brakes since he worked with Jerry and knew that Jerry would be using his patrol vehicle the next morning.
2. Defenses: His conduct of cutting brakes did not result in Jerry's death.
 - a. Causation – Marleen is an intervening cause – independent and dependent.
 - b. Jerry was placed on life support for two years, Under CL – its been over 1 year and 1 day, therefore, the causation link would be questionable.
 - c. Harry still can be charged with murder because Jerry ended up in coma and was only left on life support because he did not have any family to let hospital know about his last wishes.
3. Attempt: Cutting of brakes to kill Jerry if homicide causation link is broken.
4. Homicide – Rookie's death
 - a. 1st degree: Harry did not have knowledge of Rookie's presence in Jerry's cruiser since the chief only called Jerry the morning of the accident.
 - b. CDHL – Harry worked in the same unit as Jerry, also, Police cruisers are often used to transport individuals, and when Harry cut the brakes of the cruiser, he demonstrated a conscious disregard for anyone that may have been ridden in Jerry's cruiser.
 - c. Invol Manslaughter – Recklessness analysis same as Jerry.

5. Causation: Cause of Death was accident when Jerry swerved and crashed into an oak tree and rookie died since Jerry forgot to tell Rookie to wear his seat belt.
 - a. Foreseeable that someone may not be wearing their seatbelt and may be extricated from the vehicle.
 - b. Foreseeable that Jerry may swerve after discovering malfunction of brakes.

Jerry's crimes

1. Homicide – Rookie's Death.
 - a. Involuntary Manslaughter – Reckless as he was not driving carefully, not paying attention, did not remind Rookie to wear seatbelt, and swerved into an oak tree even though he is trained in dangerous vehicle maneuvers.
2. Defenses:
 - a. Accident

Answer Outline – Q2

Fred's crimes:

1. Solicitation – Suggestion at lunch to break into Kevan's house.
2. Conspiracy
 - a. F&D talk on the phone to meet up to discuss details for burglarizing Kevan's house.
 - b. F&D meet up to talk about details to break in and supplies needed
 - c. F&D go to the store to purchase materials for burglary (overt act)
3. Accomplice liability
 - a. D picked up Fred to drive to K's house to burglarize.
 - b. Fred is principal.
4. Burglary
 - a. Entered K's house by breaking through a window with the intent to commit theft.
5. Theft
 - a. \$1000, Jewelry, and laptop – put in backpack.
 - b. Slight asportation is sufficient and crime of theft was completed

Dante's crimes:

1. Solicitation
 - a. Called Natascha regarding burglarizing K's house
2. Conspiracy – Same as Fred
3. Accomplice Liability – Same as Fred, but Dante is also a Principal in this case.

4. Burglary

5. Theft

Natascha crimes:

No crimes – she said, she wants to have nothing to do with the plan.

Ashley's crimes:

1. Homicide: Murder

- a. First Degree Murder – intended to kill person walking behind her since she pulled the knife out, turned around and stabbed co-worker.
- b. Second Degree Murder – CDHL – stabbed coworker for walking behind her too closely.
- c. Vol Manslaugther – Imperfect Self Defense

2. Defenses:

- a. Self defense
- b. Insanity defense – PTSD
 - i. M'Naughten
 - ii. Irresistible impulse
 - iii. Durham



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State vs. HARRY ✓

1st Degree Murder: ✓

CA: The unlawful killing of another human being or a fetus (express malice) malice afterthought with the intent to kill, and with premeditation and deliberation, or during the commission of a Felony.

C/L: The killing with malice afterthought with the intent to kill or cause great bodily injury, ~~with premeditation and deliberation~~, Depraved-Heart, Implied Malice, or during the commission of a Felony.

Here, Harry had the specific intent to kill or cause great bodily injury to Jerry by cutting Jerry's breaks to his police cruiser. Harry premeditated his actions for more than a week after he found out that Jerry was the other man his wife, Marleen was talking to. Harry had plenty of time to think about his next steps and what to do after he found Jerry's address in the police database. Harry deliberately planned and decided to ~~kill or cause~~ ^{1st Deg.} harm to Jerry. Harry snuck over to Jerry's house in the middle of the night so that no one could see him cutting the breaks on the police car, that later on caused the crash that induced Jerry into a comma. Harry purposely and knowingly cut the breaks to cause great harm to Jerry.

MPC

Therefore, Harry could be charged with 1st Degree Murder in CA or Murder under a Common Law jurisdiction because he acted with malice afterthought and the intent to kill or cause great harm to Jerry. As a police officer, Harry knew that cutting the breaks was very dangerous and it would lead to a horrific outcome.

as there's good chance I would have to respond quick, he works w/a, knows his work load

2nd Degree Murder:

CA: Killing another human being with the intent to kill (express malice) but without deliberation and premeditation. Implied Malice, danger to human life was foreseeable or conscious disregard for human life.

Here, Harry had the intent and express malice to kill Jerry by snicking into Jerry's home at night time and cutting his police car's breaks. Harry knew that this would cause a great danger to Jerry because this was his car for work as a police officer. Harry knew Jerry would eventually drive his police car to work and Jerry would have to drive fast or break suddenly during a police chase or something of the like while he was working the police car.

Therefore, Harry could also be charged with 2nd Degree Murder for acting with conscious disregard for human life, but 1st Degree might be more appropriate if the prosecution can show that he acted with deliberation and premeditation.

Causation:

Actual cause: Harry's unlawful acts caused Jerry's accident that put him on a comma. It is possible to apply the "but for" test in this situation. (But for Harry's actions of cutting the breaks, Jerry's car would have been working properly and his accident could have been avoid it.) Therefore, Jerry would have not been in a comma for 2 years, after Marleen eventually called to hospital to pull the plug on his life support. *But comma did not cause death.*

Substantial cause: Given the fact that various caused led to Jerry's death, it is fair to say that Harry's actions were a substantial cause as he was the one to cut the breaks, that caused the accident, and later on, Jerry's death. If it wasn't for Harry's actions, Jerry would not been in a vulnerable position in comma for 2 years in the hospital.

Proximate or Legal cause:

Good job
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Therefore, Harry could be charged with 1st degree murder or 2nd degree murder in California, and Murder in a Common Law jurisdiction. ?

Voluntary Manslaughter: *Where is Prov. Cause?*

Intent to kill with conscious disregard for human life, but mitigated, if Defendant acted without malice afterthought. Defendant was provoked by the victim and Defendant acted due the provocation or heat of passion. Defendant had no time to "cool off". Imperfect Self-Defense if Defendant had a mistake in believe, and Defendant believed he/she need to act in self defense due to an imminent danger. Defendant must have used proportional force to the danger.

Here, Harry might argue that he acted in such a way because he was provoked by Jerry because he was talking to Harry's wife, and therefore Harry was under the influence of extreme emotion, but this might not work because Harry had a whole week to think about his actions and that was plenty of time to cool off. Harry still decided to move forward with his plan after having days to think about not killing Jerry. ✓ *Good*

Therefore, Harry might not be able to mitigated his 1st Degree Murder to Voluntary Manslaughter because he time to change his mind, and still went ahead and decided to do an unlawful act that perfectly knew would cause harm or kill Jerry.

✓ *Good job*

Burglary:

Entering a estructure with the intent to commit an unlawful act.

Here, Harry snuck over to Jerry's house in the middle of the night and cut Jerry's breaks to his police car.

Therefore, Harry could be charged with burglary.

✓

State vs. MARLEEN ✓✓ **1st Degree Murder:** Supra

Here, Marleen heard that Harry had been the one to cut Jerry's police car breaks after he found out that Marleen was talking to Jerry (Marleen thought Harry's actions were *deliberate* romantic and was willing to do anything to save the marriage.) Marleen premeditated to call the hospital where Jerry had been in life support to tell the staff that she was Jerry's only relative and authorized them to plug on the life support and end Jerry's life. Marleen deliberated in this decision as she had time to reflect on what to do next prior to calling the hospital and make them believe that she was the only relative. ✓

Therefore, Marleen could be charged with 1st Degree Murder because she (purposely and knowingly) instructed the hospital to end Jerry's life.

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Accessory after the fact?

State vs. JERRY**Involuntary Manslaughter:**

CA: The killing of another human being without the intent to kill and/or no conscious disregard for human life. Defendant acted with criminal negligence, recklessly and created a high risk of death or great bodily injury. Defendant was not subjectively aware of the risk. ✓

C/L: Gross negligence, no conscious disregard for human life during the commission of a Felony or the attempt to commit an unlawful act.

Here, Jerry was responsible to check his police car in a regular basis for safety reasons and he did not. Jerry was in charged to train the Rookie and look out for the Rookie's safety while they were training. Jerry failed to remind the Rookie to buckle his seat belt. The

Rookie died when Jerry panicked and turned sharply and crashed into the tree. The Rookie might had greater chances to survive if he had been wearing his seatbelt. Jerry did not kill The Rookie intentionally nor was subjectively aware of the risk because he did not know the break did not work. But, Jerry acted recklessly and created a high risk of death of great bodily injury by not paying attention to the road, and slammed on his breaks when he saw the squirrel, which caused him to turn sharply and crashed into the Oak tree.

Therefore, Jerry could have been guilty of Involuntary Manslaughter for the Rookie's death if he would have lived.

Good job.

Well done, but you are missing the prox. Cause analysis for Harry.

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People v Dante, Fred and Natacha

Burglary

Burglary is the unlawful entry into a dwelling with the intent to commit a felony or steal valuable ($\geq \$950$) belongings therein. *not correct*

Dante and Fred are both guilty of burglary, they used a glass cutter to make a hole in the window and entered Kevan's house with the intent to rob him? The facts of the case state that both Dante and Fred were struggling with money and having trouble paying bills. They both agreed that they would break into Kevan's house to steal things. They attempted to steal jewelry, \$1,000 in cash and a laptop, which is more than \$950. Even though they accidentally dropped the backpack with the stolen items in it, they still committed burglary because they unlawfully entered the house with the intent to steal. ✓

I Larceny by Theft

f Theft is the trespassory taking and asportation of a person's property with the intent to permanently deprive.

A Both Dante and Fred would be charged with larceny by theft. Even though, it may be argued that they did not end up with the stolen items, they took them and put them in the backpack, which is both the trespassory taking and asportation of the items. The facts state that they accidentally left the backpack, which shows they took and moved the items with the intent to permanently deprive the owner of them. *Good*

Conspiracy

Conspiracy is the agreement between two or more persons to commit an unlawful act or series of unlawful acts with the intent that the acts be committed and communicated to the other person. ✓

Both Dante and Fred could be charged with solicitation, as they agreed to break into Kevan's house and they planned to meet up and discuss how to do it. They did make an agreement to commit the series of unlawful acts and they communicated it between themselves and Natacha. Natacha would most likely not be charged, as she never agreed to commit the unlawful act; as soon as Dante called her and told her the plan, she said that she did not want anything do with the meeting and hung up. Even though she did not inform the police or do anything to prevent the act, she never had the mens rea of the intent to commit the target crime or the actus reas of making the agreement.

Solicitation

Solicitation is inviting, encouraging, or commanding another person commit a crime with the intent that the crime be committed.

Dante would be the most likely to be charged with soliciting. Though it was Fred that originally mentioned that they should break into the house of Kevan, the group laughed and went their separate ways. This discussion shows that Fred did not appear to have the intent that the crime be committed. The solicitation occurred when Fred called Dante and said that he wanted to break into Kevan's house and they should meet up to discuss how to do it. ^{called} The facts of the case show that Dante intended the crime to happen because he was struggling to pay his bills. Kevan was the doctor who reported Dante and the reason he lost his job.

Assault

Assault is the intentional act of causing someone apprehension of being harmed or offended.

Dante and Fred could be charged with assault on Ashley. Though Dante and Fred both ran away when they were confronted by Ashley, their presence during the burglary caused Ashley enough apprehension that she was quite shaken by the event and later diagnosed with PTSD. The defense could claim that Dante and Fred did not have any weapons and they did not intend to cause Ashley to fear that she would be harmed. This would be difficult for the prosecution to prove, but the trier of facts may infer their intent from their actions. **N/A.**

Defenses

There do not seem to be any defenses that could be proven by Dante and Fred.

People v. Ashley

Attempted Homicide

Attempted homicide is the attempt to murder another human and has the same elements as the target crime, but the actor does not successfully complete the act.

Attempted 1st Degree Murder

First degree murder is the intentional killing of another person with malice aforethought done with premeditation and deliberation. Malice is done with one of four mens rea: intent to kill (express malice), intent to inflict gross bodily harm, extreme disregard for human life or felony murder. Premeditation is the quantity of time the actor had to think about the act and deliberation is the quality of time.

The prosecution would not be likely to get a conviction for 1st degree murder as Ashley showed no premeditation or deliberation. It would be very difficult to prove in the time Ashley was walking and as the individual picked up speed that she had time to adequately deliberate her actions. There are also no facts to show that she premeditated the act.

Attempted Second Degree Murder

Second degree murder is the intentional killing of another person without premeditation and deliberation.

Ashley could be convicted of attempted second degree murder, as it could be shown by her actions that she intended to inflict gross bodily harm, by stabbing the new employee in the eye. If not intent to inflict GBI, it could be proven that she had an extreme disregard for human life, as it is quite foreseeable that you could seriously injure or kill someone by stabbing them in the eye. This would prove malice aforethought. Her intention could also be implied by the deadly weapon rule, as she used a knife.

Attempted Voluntary Manslaughter

Voluntary manslaughter is the intentional killing of another human in a sudden heat of passion due to adequate provocation.

It is not likely that Ashley would be charged with voluntary manslaughter, as the facts state that without provocation, Ashley took out her knife, turned around and attacked the individual.

Imperfect Self Defense

Attempted Involuntary Manslaughter

Attempted Negligence?

Involuntary manslaughter is the killing of another person without intent or conscious disregard for human life but is criminal negligence.

If the prosecution is not able to prove that Ashley intended to kill the new employee, she could be charged with attempted involuntary manslaughter. Even though a reasonable person would have seen the danger in attacking the individual, if Ashley unreasonably didn't foresee the harm, she may be held at criminal negligence. This would be very

unlikely, as her actions would give a trier of fact, the ability to infer that, through the use of a deadly weapon, she could foresee that she was putting someone in extreme risk.

Battery

Battery is the intentional contact with another person or something appurtenant to, which causes harm.

If Ashley is not convicted of homicide, she could be convicted of battery. She intentionally stabbed the new employee in the eye with her knife which caused severe harm.

Defenses

Imperfect Self-Defense ✓

Imperfect Self-Defense is when someone unreasonably believes that they are in imminent danger of death or gross bodily injury and that immediate use of deadly force is necessary to protect themselves or a third person.

Ashley will most likely claim imperfect self-defense. Her actions in the underground parking lot, when she heard footsteps behind her would support her claim that she believed the person was trying to get her. The first thing she told police is that she thought it was Dante behind her. She was traumatized by the burglary committed by Dante and Fred which led to her PTSD diagnosis. The prosecution could claim that she did not meet all of the elements for self-defense, including that she used excessive force. Ashley did not have any reason to believe, that just because someone was walking behind her, that they would be going to use deadly force. She did not take long enough to assess her situation to see if the person was in fact Dante. She acted in a conscious disregard for human life when she stabbed first and looked after.

was she entitled self defense if a person would be in a situation where facts are as believed from Δ.

Insanity Defense ✓

A person can claim an insanity defense, if at the time of the act, they were impaired by mental defect or disease such that they could not determine the criminality or wrongdoing of their actions or have the ability to conform to the law.

Ashley was diagnosed with PTSD, after he confrontation with Dante and Fred, which is a recognized as a mental disorder. Using the M'Nagthen test: 1) Ashley was diagnosed with a mental defect or disorder; 2) at the time of the incident, the disorder made it so that Ashley could not distinguish that she was not being attacked and 3) she did not have the ability to tell that she ~~would be breaking the law~~ *was actually stabbing someone else*. Using the Irresistible Impulse test: Ashley had such an irresistible impulse to protect herself; that she was not able to control her actions in protecting herself. Using the Durham Test: If not for Ashley's mental disorder of PTSD, she would not have thought she was in danger and would not have stabbed the new employee. Though the insanity defense is a very difficult affirmative defense to prove, the fact that Ashley was diagnosed with PTSD and a casual relationship to the disorder and unreasonable belief that you are in danger, would make an insanity plea be possible. The prosecution may bring up the fact that Ashley was aware of her actions and knew they were wrong and that is why as soon as she was done stabbing she panicked and left the garage.

Durham Test.
Conclusion

Natcha would most likely not be charged with a crime. Dante and Fred would be charged with Burglary and Larceny and could also be culpable of Solicitation and Conspiracy. They could be charged with Assault on Ashley. Ashley would most likely be charged with Involuntary manslaughter, due to the imperfect self-defense claim, but she may be found not guilty by reason of insanity.

Good Job.
END OF EXAM

