

Monterey College of Law
Criminal Law & Procedure
Midterm Examination
FALL 2024
Professor S. Haas

General Instructions:

Answer Two (2) Essay Questions.

- Essay Question 1 is worth 100 points; the recommended allocation time is one hour.
- Essay Question 2 is worth 200 points; recommended allocation time is two hours.

Total Time Allotted: Three (3) Hours

MCL
Criminal Law
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QUESTION 1 (100 points - 1 Hour)

David and Mary live next to Highway 101 with their autistic 8-year-old daughter Vicky. Unfortunately, Mary is diagnosed with a fatal illness and Vicky witnessed her mother's dying days. After the mother's passing, Vicky started acting out, breaking objects and running away at night.

A social worker has been appointed for Vicky. The social worker visits their home and recommends David to make changes including child proofing the home. Also, installing an alarm system and motion sensors to keep an eye on Vicky at night especially since they lived very close to the highway. The social worker also assists David in getting state funded grant of \$1,000/month. This money is strictly for Vicky's welfare such as for child proofing, upgrading locks, installing and maintaining sensors and a working alarm system. David installed the alarm and sensors for approximately \$500, \$100 for locks, and \$500 for miscellaneous child proofing items.

David continued to receive \$1,000.00 a month for a year for Vicky's benefit, which he used solely to support his alcohol addiction. David did not inspect the sensors or alarm to make sure they worked after the initial installation. Unbeknownst to David several of the alarm door sensors had malfunctioned. On the night of December 1, Vicky got out of the house undetected and walked onto the Highway 101 leading to her death.

What crimes, if any, can David be charged with? What defenses, if any, can he raise? Please answer pursuant to California law only.

QUESTION 2 (200 points - 2 Hours)

Paul and Vickie have been married for 10 years and they did not have a good relationship due to Vickie's infidelities and Paul's alcohol addiction. Paul's ex-girlfriend Ally recently returns to town and runs into Paul. She becomes romantically interested in Paul again and tells her friend Fran, she would like to get Vickie out of the way, so she can rekindle her relationship with Paul. Fran asked what Ally meant by "get out of the way"? In response, Ally shared her plan to poison Vickie. Fran shrugged her shoulders and said, "do whatever makes you happy, I love you and I am here for you."

After visiting Fran, Ally went to Paul's house. She met with Paul, expressed her interest in him and he responded favorably. Ally spent approximately two hours seducing Paul, serving him drinks, and reminding him of Vickie's infidelities. How her infidelities caused him to drink heavily, losing his medical license and ending his career as a world-known plastic surgeon.

Enraged, Paul stated, "he wants to destroy Vickie's life just like she destroyed his career". In response, Ally brought up her elaborate plan to poison Vickie and asked for Paul's help to stage it as a DUI. Both agree to stage a dinner with Vickie the next evening, at which time they will execute their plan. Ally left and Paul continued to drink.

At 1:00 a.m., Vickie returns home. Considering the late hour, and infuriating statements by Vickie, Paul started arguing with Vickie. The altercation turned physical and Vickie fell off a grand staircase to her death. Paul immediately called Ally and informed her, "We were fighting, and, Vickie's heel got stuck on the staircase and she was just hanging there; I could have saved her, instead I let her go and now she's dead. She ruined my life and got what she deserved." Ally tells Paul that she wants to have nothing to do with him, Vickie or their plan.

Please discuss what crimes, if any, the prosecution would likely bring charges on against Fran, Ally, and Paul. What defenses, if any, may these defendants raise? Please apply California law only.

OUTLINE QUESTION 1

HOMICIDE

Actus Reus – Omission, failure to act.

First degree murder: Intent to kill, premeditation, and deliberation and felony murder. No intent to kill, David not aware Vicky walked out of the house.

Second degree murder. Depraved heart/ reckless or conscious disregard for human life. He was aware of the risk that he was creating considering the relevance of that alarm system. The only reason that Vicky was able to escape without detection was the failure of the sensors. David had a duty to check the alarm system since he was aware of the risk of her getting out in the middle of the night and potentially ending up on the highway.

Voluntary manslaughter: Voluntary manslaughter is an intentional crime. There is no intent to kill.

Involuntary manslaughter. Defense could argue that although David knew the relevance of the alarm system, his actions did not constitute recklessness as he was not aware that the sensors were not working. David had a duty to check those sensors and ensure the alarm system was continuously working, and he failed to act on his duties.

Theft from the state: Theft by false pretenses – he received \$12,000 in a year under the agreement that money would be used solely for Vicky. Instead he continued to cash checks to buy alcohol.

Embezzlement: Was entrusted by state with money for Vicky. David converted the money for his use.

Question 2-OUTLINE

Fran's crimes

Conspiracy: Agreement + overt act for Vickie's death

Ally discussed her plan with Fran, Fran responds – do whatever makes you happy, I am here for you. F does not intend V's death. She simply listens to her friend, says encouraging words and ends the visit. She has no duty to report a crime.

First Degree – Conspiracy for First Degree Murder requires all co-conspirators have the intent victim's death. There is no agreement.

Accomplice liability: Assist, encourage, aid, etc. with the intent that target crime be committed. Encouragement since F says she is there for Ally after knowing Ally's intentions to kill V. Difficult to infer intent to kill based on mere words of support.

Ally's Crimes

Solicitation: With the intent to kill V, Ally shares her plan with Paul and Paul agrees to help Ally kill V.

Conspiracy: First-degree murder; she had an elaborate plan to poison V and discussed with P, who agreed.

Overt act – When V was hanging on the staircase, he made a decision not to help her and let her fall to her death. Ally may argue, she was not present during the death, the killing was not committed by poisoning, was not performed in furtherance of conspiracy, and it was an independent violent act by Paul in response to provocation by Ally and Vickie's words. Any co-conspirator can commit the overt act and arguably, when P let V fall to her death, he acted in furtherance of conspiracy's goal to kill V. Just because the killing was not caused by poison as per their plan does not obviate Paul's intent to kill when he let her go.

Withdrawal: It was only after the killing that Ally told Paul she wanted to have nothing to do with him. If overt act is found, then no withdrawal.

Paul's Crimes

Omission – failure to act, spouse, placed her in the position of peril by engaging in physical altercation by a grand staircase.

Conspiracy – Agreement with Ally to kill Vickie + Failure to save Vickie.

First-degree murder, intent to kill plus premeditation and deliberation. Paul had intent to kill based on his conversations with Ally, he agreed to assist Ally in poisoning and staging V's death the next evening.

Enraged, he initiated an argument with Vickie that quickly turned physical. At one point of the altercation, Vickie ended up stuck on the staircase, and Paul decided to let Vickie fall. P+D is not about time, it can be accomplished in a brief time. Statement regarding, she got what she deserved further confirms Paul reflected on his decision to let Vickie fall to her death because he blamed her for his addiction and loss of career.

Voluntary manslaughter: Killing under heat of passion caused by adequate provocation by the victim. Paul will argue he was provoked by Ally's discussion of Vickie's infidelities, continued drinking, and Vickie's insults. He was angry about his lost career. Words are not sufficient and provocation must come from Vickie.

Second Degree Murder: Intent to kill without P+D.

Defenses

Voluntary intoxication, a defense to specific intent crimes; it is not applicable here since the facts state the defendant knew what he was doing, and he was aware of his actions.

1)

I. Prosecution may pursue the following criminal charges against David: Larceny by False Pretenses, Embezzlement, and Second Degree Murder, Implied Malice, CDHL

1. Larceny by False Pretenses

Larceny by False Pretenses (FP) is a specific intent crime that occurs when D (1) obtains ownership/title of the property of another (2) through false statements of material fact (3) with the intent to defraud, (4) without justification or excuse, (5) and the victim relies on these statements of fact when transferring title.

Prosecution may pursue a claim for FP following David's application and receipt of a grant from the state of \$1000 per month to care for and secure his home on behalf of his daughter, Vicki. When applying for a grant for welfare money to be received on behalf of a child, generally the applicant must state how the money will be used and attest that any money received from the state will be used for the child's benefit. Here, David is awarded the grant money on the condition that the money be spent on Vicky's needs and only Vicky's needs. If David signed an attestation typically included on such applications, and if the state can show he did so knowing that he had the intent to use the grant for his drinking habit, then David made false statements of material fact in order to fraudulently receive and spend state money. Therefore, David may be liable for FP. *charged w/*

However, David will argue a defense for lack of intent and lack of concurrence. He will argue that when he worked with the social worker and filled out the application, he had every intention to spend the grant money only on Vicky but life got hard and because he is fighting an addiction, he decided to spend the money on alcohol after he signed and submitted the application. He will point to the fact that he did spend the initial money on securing the home, but since misappropriated the funds. However, the State may counter

that every check received and cashed is an implied attestation and therefore every check deposited and misappropriated is further FP, though this may be a tenuous argument.

David has a reasonable defense against FP and, barring any additional evidence, may not be held liable for FP because he lacked the necessary mens rea at the time of submitting the application. *charged w/*

2. Embezzlement (EM)

EM is a specific intent crime that occurs when D (1) misappropriates the property of another (2) entrusted to him under a relationship of trust (3) in a manner such that benefits D or a 3rd party, (4) without consent, justification, or excuse. *D took money monthly spending it the same way! It's demonstrative of his cont. intent to defraud*

Prosecution may pursue a claim for EM following David's use of the grant money entrusted to him for use on behalf of Vicky. The state gives David \$1000 per month to care for and secure his home on behalf of his daughter, Vicki. The State will argue that every check received and cashed is was explicitly stated to be used for Vicky's benefit. David however used his position of trust as Vicky's father and legal representative to use the money to fund his drinking rather than use the money for the purpose it was entrusted to him to use it for. After initially securing the property, he used the money to benefit himself, not Vicky, without the consent of the State.

David may assert a defense of consent and argue that because he is Vicky's legal representative and she is under 18, he is permitted to consent on her behalf, and therefore used the money with her implied consent. However, this defense would fail for the same reasons as stated above: the money was granted to David under the express condition that it be used on Vicky's needs, regardless of if Vicky "consented" to a different use or not.

David may further assert a defense of voluntary intoxication - He may argue that he is always drunk, such that when he receives the check from the state, he is so intoxicated he doesn't have the ability to formulate the required mens rea to commit EM. Again, this

No facts to suggest he is always drunk.

defense would fail. Prosecution would argue that if he had the ability to intend to get the check from the mail or check if the direct deposit was made, then proceed to spend the money on anything except Vicky's needs, then he had the ability to form the necessary intent to embezzle the funds for his own use and benefit.

chased w/
Therefore, David will be held ~~criminally liable for~~ Embezzlement due to his misappropriation of the funding intended for Vicky.
✓

I. First Degree Murder

First Degree Murder is the killing of a human being or fetus with express malice (intent to kill) with premeditation and deliberation (PmD).
✓

(A) Express malice requires the defendant (D) act with specific intent that a particular act or result occurs.

(B) Premeditation requires that the D make the decision to kill before the act causing death. Premeditation is not limited by time but is determined based on the circumstances as proved by evidence.

(C) Deliberation occurs when D carefully weighs the pros and cons of his actions, and with knowledge of the consequences, makes the decision to kill. \

Here, there is no indication that D had the express intent to kill Vicky, but rather that he was grossly reckless or criminally negligent, therefore the prosecution would pursue a charge of Second Degree Murder.

2. Second Degree Murder

*he did not kill vicky,
she was killed by
a vehicle on 101.*
Second Degree Murder is (A) the killing of a human being or fetus with express malice (intent to kill) without PmD, or (B) the killing of a human being with implied malice conscious disregard for human life (CDHL).

A. Second Degree Murder, Express Malice

Supra, 1A. Again, there is no indication that D had the express intent to kill Vicky, but rather that he was grossly reckless or criminally negligent, therefore the prosecution would pursue a charge of Second Degree Murder, CDHL.

B. Second Degree Murder, Implied Malice, CDHL

CDHL requires that (1) the voluntary act or omission (collectively the "Act") will natural and probably result in death or gross bodily harm (GBH); (2) that a reasonable person would know that the Act is likely to result in death or GBH; (3) that D knows or is substantially certain to know that the Act is likely to result in death or GBH; and (4) D acts with conscious disregard of this risk.

Here, the State may have a reasonable claim for Second Degree Murder, CDHM. As Vicky's sole parent, David has a legal duty to care for and protect his child. Any failure to act under this duty of care that subsequently results in Vicky's death would make David directly liable for Vicky's death. Vicky has autism, and especially following her mother's death, she requires a higher level of care than the average child. Therefore, David had a higher legal duty beyond that of the average parent to care for and protect his daughter. He was to act as a reasonable person with an autistic child (who is known for acting out and running away at night) would act. A reasonable parent in the same situation would recognize the high risk of harm that is natural and probable to result from a failure to act under the duty of a parent. A reasonable parent would consider the behavior of their child leaving at night and consider the proximity the highway with vehicles traveling at 65+MPH and the likely and probable result of death or GBH if she is not properly secured at night.

Concurrence and causation are implicit in all crimes. Prosecution must prove beyond a reasonable doubt that defendant's (D) act was the actual and proximate cause of the

→ D has to act more than negligent
means negl.

resulting harm. An act or omission (failure to act) (collectively an "Act") is the actual cause-in-fact of the injury or social harm (collectively "Harm") if the Harm is the direct, natural and probable consequence of the Act, and the injury would not have occurred "but-for" or without the Act. A Natural and Probable Consequence ("NPC") is one that a reasonable person would know is likely to happen if nothing unusual intervenes. To determine if an event was the NPC of an Act, courts will consider all circumstances established by the evidence. If there are multiple intervening events any of which alone would cause the Harm, then an Act is said to cause the Harm only if it was a substantial factor in causing the resulting Harm. Substantial factors are more than "trivial" or "remote."

The prosecution will show that D knew and was substantially certain that his failure to properly care for Vicky would result in her death or GBH. The social worker during her visit made specific recommendations on how David needed to child proof the home. She directed him to install alarms and motion sensors to keep an eye on Vicky at night "especially because they lived very close to the highway." David was aware of the risks to Vicky if the security and alarm system should fail and she should wander out to the highway at night. Past experiences and direct instruction made him grossly aware of these facts and he needed to ensure everything worked at all times for Vicky's safety. Furthermore, David is likely aware of his own condition as an alcoholic and that he is the only parent in the house. Should he pass out drunk, he would be solely dependent on the security systems proper functioning to care for his daughter during his mental absence. Yet, despite all the instruction and prior knowledge, he did not properly maintain the sensors and alarms. *Very good*
✓ he created a risk.

D will argue a defense of lack of causation and claim that he was not the cause of V's death. Her voluntary departure from the house was not his fault and that the fact that she was on the highway was too remote a result. However, this defense will likely fail as prosecution may certainly show that D's Act was proximate cause of Vicky's death. In

consideration of all the circumstances surrounding Vicky's death, any intervening events were dependent and foreseeable given D's responsibility and his failure to properly care.

Therefore, Prosecution will be successful in a criminal charge for second degree murder.

C. Involuntary manslaughter

Involuntary manslaughter occurs when an unintentional killing results from D's criminal negligence, non-violent misdemeanor, or gross negligence elevating the act to criminal negligence.

Here, David may argue a defense for involuntary manslaughter if he can show that Vicky's killing was the result of his gross negligence elevating his Act to criminal negligence.

While D did not "intentionally" kill Vicky, his behavior was beyond negligent or careless.

(Negligence is to conduct oneself below the standard of a reasonable person would in the same situation.) David's conduct was so far beyond this baseline. He spent money meant to secure the home for his daughter's safety on his drinking. He shirked his duties as a father to keep an eye on his daughter and further couldn't be bothered to maintain the security system. His behavior is so far beyond that of an "unreasonable" person.

Crim negligence beyond std. of reasonable person
His conduct reflects grossly reckless behavior with conscious disregard for his child's life or gross bodily harm, therefore prosecution will (should) hold firm to Second Degree CDHL.

Very Good Job
85

2)

STATE v. FRAN**Conspiracy**

An agreement between two or more people to commit a crime that requires an overt act. There must be the (1) intent to enter the agreement (2) intent to commit the crime and (3) the intent that one of the parties commit the overt act. An overt act is more than just mere preparation or planning and must be in furtherance of the conspiracy.

Here, Ally informed Fran of her plan to poison Vickie. However, it is not clear from the case that Fran meets all the elements to be charged with conspiracy. Although she "shrugged" her shoulders and told Ally to "do whatever makes her happy" and "I am here for you", this does not clearly show that Fran had the intent to enter into an agreement nor the intent to commit the crime in question. Therefore, the Prosecution would need to establish these facts and if so, then they may be able to charge Fran with conspiracy. However, if the Prosecution is unsuccessful in establishing that Fran meets all the requirements then they will not be able to charge her with conspiracy.

Conclude:

Comp. to Commit 1st D.

Accomplice Liability

The act of aiding and abetting, or encouraging someone to commit a crime w/ the intent that crime be committed.

Here, when Fran became aware of Ally's plan to poison Vickie she expressed to Ally her support showed by her choice of words, "do whatever makes you happy, I love you and I am here for you". This can be seen as encouraging Ally to proceed with her plan. Fran at no point expressed to Ally that she should not proceed and did not inform the authorities of Ally's plan. She was aware that Ally had created a plan to kill Vickie. If the Prosecution

can show that Fran encouraged Ally to proceed with her plan to kill Vickie then she may face criminal charges for accomplice liability and may be charged with solicitation as well.

There is no intent.

Defenses

There appears to be no defenses available to Fran for the crimes listed above.

STATE v. ALLY

Solicitation

The act of asking or commanding someone to commit a crime with the intent that the crime be committed.

Here, Ally brought up her plan to poison Vickie to Paul. She then asked for Paul's help to stage the incident as a DUI. Ally meets the first element of asking someone to commit a crime. Additionally, her intent that the crime be committed can be established through her own actions and words. She expressed her intent to poison Vickie to Fran for the purpose of getting Vickie "out of the way". After hours passed she then mentioned her plan to Paul showing that she had time to think about her plan and still expressed her intent to Paul to proceed, going as far as asking him for assistance to stage her death as an accident (DUI).

Ally meets all the requirements for solicitation and it does not require an actual act to be committed to be charged and convicted for solicitation. Asking is sufficient under California law. For these reasons, the Prosecution can charge Ally with solicitation.

Good job.

Conspiracy-- Supra

Here, Ally informed Paul of her plan to poison Vickie. Both agreed to commit the crime and planned to execute it by staging a dinner with Vickie where they would poison her. Although the intent to enter the agreement and commit the crime can be shown through the facts in this case, it will be difficult for the Prosecution to establish that either party involved committed an overt act. Aside from Ally and Paul discussing their plan, neither ever committed an overt act to further their plan to poison Vickie. If the Prosecution can establish that fact then a conspiracy charge may be successful, however if the Prosecution cannot then most likely Ally will not be charged with conspiracy.

Good job.

Defenses

Withdrawal?

There appears to be no defenses available to Ally for the crimes listed above.

STATE v. PAUL

1st Degree Murder

The unlawful killing of a human being or fetus with malice aforethought (express malice) with the intent to kill and with willful, premeditation and deliberation.

Here, the Defendant had previously discussed killing Vickie with Ally. His intent to kill her was established then. Additionally he had planned and had time to think about killing

Vickie prior to her death. Furthermore, the deliberation and premeditation does not need to be for a certain amount of time but instead can be an hour, minutes, and even just a few seconds. when Vickie was hanging by her heel on the staircase, Paul confirmed that he had the chance to save Vickie, implying he had a moment to think about his actions but chose to "let her go" ultimately resulting in her death. The Defendant's actions were also deliberate and the Prosecution can establish this based on Paul's reaction when he informed Ally of the victim's death, stating, "she ruined my life and got what she deserved". The defendant also confirmed to Ally that he was aware Vickie was in fact dead.

Good

For these reasons, the Prosecution will be able to charge the Defendant with 1st degree murder.

2nd Degree Murder

The unlawful killing of a human being with the intent to kill but without premeditation and deliberation.

Here, the Defendant expressed his intent to kill when he planned to poison Vickie. Additionally, he had the opportunity to save Vickie but instead chose to let her fall down the staircase to her death and with his added remark that Vickie got what she deserved, his intent is clear. Defendant wanted to kill Vickie and when presented with the opportunity, although different than what he had planned, he took the chance and killed Vickie.

For these reasons, the Prosecution will be able to charge the Defendant with 2nd degree murder.

Voluntary Manslaughter

The unlawful killing of a human being in the heat of passion as a result of adequate provocation that would have caused a reasonable person to react unreasonably.

Here, Defendant was seduced for two hours while being served alcoholic beverages. Defendant was adequately provoked when he was reminded of Vickie's infidelities which caused him to drink heavily. Additionally, he lost his medical license and his career as a "world-known plastic surgeon" was ruined. Any reasonable person subjected to these provocations over the course of two hours regarding their life and career being ruined, would caused them to act in a manner that they normally would not, especially when alcohol is involved." Good

As a result of these "infuriating statements" the Defendant got into a physical altercation, and when Vickie found herself hanging from the staircase by her heel, he chose to let her fall down the stairs despite having the ability to help her thus causing her death.

words are not suff. Provocation from V.
For these reasons the Prosecution can charge the Defendant with voluntary manslaughter.

Involuntary Manslaughter

The killing of a human being that results from a conscious disregard for human life. (criminal or gross negligence)

Here, the Defendant had been drinking for multiple hours by the time he got into a physical altercation with Vickie. However, he was conscious enough to be aware of his surroundings and was able to properly determine Vickie was dead, managed to call Ally,

and informed her of everything that had occurred in the sequence that the events took place. Therefore, it can be shown that the Defendant was conscious enough to know what may happen if Vickie fell down the grand staircase and still decided to proceed with letting her fall showing a ~~conscious~~ gross negligence for human life.

For these reasons, the Prosecution may charge Paul with involuntary manslaughter.

CAUSATION

Actual: To determine whether Paul can be charged with the death of Vickie we must assess if the result was directly correlated to the Defendant's actions. In order to do that we can apply the "But for" test. But for the Defendant's actions would Vickie have been killed.

Here, But for the Defendant getting into a physical altercation and letting Vickie fall down the staircase instead of saving her, she would not have died. Therefore, it can be established that the Defendant was in fact the actual cause of Vickie's death.

Proximate: Additionally, was it foreseeable that Vickie could be seriously injured and even killed as a result of the Defendant's actions.

Here, Vickie found herself hanging by her heel that got stuck on the grand staircase. It was foreseeable that if she fell down the stairs she would be seriously injured and even killed. Therefore, it can be established that the Defendant was in fact the proximate cause of Vickie's death.

Defenses

~~In~~voluntary Intoxication

The Defendant may be able to lessen his culpability if he can show that he was unable to form the necessary intent to commit the crime (~~conscious disregard~~). *Specific Intent*

Here, the Defendant may be able to raise the defense of ~~in~~voluntary intoxication. At the time of the provocation and when the physical altercation took place that eventually led to Vickie's death, the Defendant had been drinking continuously for a few hours. In addition, he struggled with alcohol addiction. The Defense may be able to argue that at the time the crime occurred the Defendant was unable to formulate the required intent as a result of his intoxication. Therefore, he may lessen his culpability and receive a lower charge avoiding 1st degree and 2nd degree murder, if established that he was in fact unable to have the intent to commit the crime. *It is the state's burden to prove intent.*

Imperfect Self Defense

When a person unreasonably believes that they were at risk of imminent great bodily injury or death, and reacted with deadly force.

Here, the Defense may argue that Paul reacted in the moment by letting Vickie go and fall down the grand staircase due to the fact that he feared what may happen if he helped Vickie up. The Defendant and Vickie did not have a good relationship which can be shown by Vickie's infidelities and Paul's alcohol addiction. Furthermore, at the time the incident occurred the Defendant was very drunk and got into a physical altercation with Vickie. As a result, the Defendant reacted with deadly force (letting Vickie fall down the grand staircase) due to his unreasonable belief that he was at risk of imminent bodily injury or death.

If the Defense can use this defense in court, they may be successful in obtaining a lower charge compared to 1st and 2nd degree murder.

END OF EXAM