

San Luis Obispo College of Law

Midterm Examination

Criminal Law & Procedure

Fall 2024

Professor S. Wagner

Instructions

1. This examination consists of three sections of equal value. There is a three (3) hour time limit to complete the exam.
2. Questions 1 and 2 are essay questions. Make sure that you read each essay question carefully before answering. Attempt to organize your answer before you start writing. The essay questions test your ability to apply the law to the facts. After stating the issue, provide a succinct statement of the relevant legal principles, followed by a detailed analysis of how these legal principles apply to the facts, and a conclusion.
3. Question 3 is comprised of 10 (ten) True-False Questions. Each question is worth 10 points. Points will be assigned based upon the selection of the correct answer and a brief explanation that supports the reasoning/rationale for the correct answer choice. It is anticipated that the associated "explanations" will require a maximum of 50-80 words.

SLOCL
CRIMINAL LAW
MIDTERM EXAMINATION
FALL 2024
PROF. STEPHEN F. WAGNER

QUESTION #1

Rick and Sally had been at Rocoe's Bar for about five hours playing darts with Tim and consuming large quantities of beer. During the second round of play an argument started regarding the score. The argument became intense and Sally pulled a switchblade knife, waved it at Tim and backed him into a hallway leading to a set of restrooms. Rick thereupon came up behind Sally and struck her on the top of her head with a beer bottle. The blow stunned Sally sufficiently to cause her to drop the knife. Rick then picked up Sally and carried her kicking and screaming to Tim's car, threw her in the back seat, and climbed in after her. Tim got in and started the car and drove out of Roscoe's parking lot. Rick and Sally continued to struggle in the back seat. As Tim slowed to approximately 25 MPH while approaching a red light, Sally managed to break free from Rick's control and quickly exited out the back door. Sally stumbled and fell directly into the path of an oncoming grocery delivery truck, driven by Hal. Hal stopped his truck immediately and rendered aid to Sally, but unfortunately, his efforts were not successful, as Sally had no pulse. Sally was pronounced deceased at the scene by medics. Rick and Tim were apprehended and lawfully arrested and they now face potential criminal charges.

1. With what crimes, if any, might Rick and Tim reasonably be charged? Discuss.
2. What defenses, if any, might be asserted on behalf of Rick and Tim? Discuss.

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QUESTION #2

On a Sunday afternoon, on his way home from a hunting trip, Brad went to Joe's house to ask Joe to return a laptop computer which Joe had borrowed from Brad three days earlier. Brad rang the doorbell and knocked on the front door repeatedly but received no response. Brad then turned

the doorknob and, finding that the door, although closed, was not locked, opened the door and entered the house to search for and retrieve his laptop computer. Brad found his laptop computer on top of a television set in Joe's living room and decided not only to retrieve the laptop computer but to steal the television set. Brad returned to the front door carrying both the laptop computer and the television set. Just as Brad placed them on the floor so that he could open the door to leave, Joe entered the room from the back hall carrying a pistol and fired a shot which narrowly missed Brad and hit the wall in front of him. As he fired, Joe shouted "Stop or I'll kill you." Brad, who heard only the shot and the words "I'll kill you!" unsheathed his hunting knife and threw it at Joe. The knife pierced Joe's chest, wounding him seriously but not fatally. Joe fell and hit his head against a table. The blow knocked Joe out. Brad fled to his own home one-fourth of a mile away and, after thinking the situation over for twenty minutes, anonymously called the ambulance service to go to Joe's home and take Joe to the hospital. This was done and Joe recovered from his injuries. On the basis of the above facts, both Joe and Brad were charged with attempted murder and assault with a deadly weapon. In addition, Brad was charged with burglary and theft. What defenses are likely to be raised with respect to these charges and, assuming proof of the above facts, of what crimes, if any, should each be convicted? Discuss.

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Question #3 (Part 3)

At each of the ten (10) fact passages, make the selection "True" or "False" along with an explanation that supports your answer. Each question is worth a total of 10 points and points may still be awarded despite arriving at the incorrect answer choice so long as your explanation demonstrates an understanding of the concepts that are being tested. The suggested and anticipated word count for your response to each question is 60-90 (Maximum).

1. D steals a camera from X and pawns it for \$50.00. V, the pawnbroker, does not know that the camera is stolen. D is chargeable with obtaining money by false pretenses.

T or F (Explanation)

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ISSUE OUTLINE Q1 / PROF. COMMENTS

FOLLOWING EVENTS CHRONOLOGICALLY,...

SALLY PULLS SWITCHBLADE AND BACKS TIM INTO A CORNER

- The argument appears to have been mutual
- Sally committed Aggravated Assault - inference is that Tim experienced the requisite level of apprehension. Might this also qualify as "Attempted Battery-Type" Assault? Note that Sally did not make a stabbing motion, but she did "wave" the knife. Use of weapon elevates crime to "Aggravated" in nature.
- Did Sally falsely imprison Tim? Being backed into a corner appears to qualify as a form of confinement. Is Tim aware of the confinement? Argue both sides.

RICK STRIKES SALLY IN THE HEAD WITH BEER BTL.

- The beer btl. will qualify as a deadly weapon
- The blow qualifies as an aggravated battery
- Rick will assert "Defense of Others" as a defense. Rick will assert that he came to the lawful aid of Tim. Tim was not in possession of a weapon and it does appear that Sally was the aggressor and that she certainly engaged in escalation. The rule re Defense of Others is commonly measured by "Stand in the Shoes" analysis; meaning that to be successful as an affirmative defense, Rick must convince the trier of fact that Tim would have had the right to use force to repel Sally's attack/advances.
- Note that Rick did neutralize the attack, as Sally dropped the knife and she likely no longer presented a threat.

RICK'S CONTROL AND MOVEMENT OF SALLY

- Issues and potential crimes: Battery, False Imprisonment and Kidnapping. Offensive contact = Batt. Forced Confinement = False Imprisonment. False Imprisonment with Asportation = K
- There is room for a Group Criminality discussion here, as Rick and Tim appear to be acting in concert. They are definitely accomplices. Conspiracy? Agreement to commit K? Not a mandatory discussion/issue.

DEATH OF SALLY / HOMICIDE / MURDER / CAUSATION

- Sally died at the hands of another - an act or omission by Rick and/or Tim = Homicide.
- Anticipated Analysis/Order of Discussion: Homicide; Actual Cause; Criminal Proximate Cause; Murder/Malice; Defenses.
- Death was not intentional, so culpability must rest upon an Implied Malice theory. The two theories vying for attention would be Felony Murder and Wanton Willful Disregard.
- The enumerated felony is Kidnapping (a GI Crime) [— A — C — F] Where on the scope continuum did the unintended death of Sally occur? Discuss. The Murder discussion MUST include a careful and thoughtful causation discussion and the legal significance of both Sally's escape and Hal's truck as factors. A/O [—/—/—>]H/R

Fault Continuum

- *Bottom Line: Sally and Hal's conduct/actions do not break the chain of causation, as Rick and Tim are at a minimum, Substantial Factors in causing the death of Sally (her escape would be deemed reasonably foreseeable under these circs.) Major Issue Alert*
- *See discussion below re Involuntary Manslaughter*

DEFENSES TO MURDER / MITIGATION

- *Will Voluntary Intoxication serve as a defense to Murder? Rule Stm? Goal is to negate Mens Rea. Prosecution has the burden to prove that the murder was committed without excuse or justification.*
- *Did students note that the best defense to FMR is a defense to the underlying/enumerated felony? This should lead to a discussion centered on the requisite Mens Rea for the enumerated/underlying felony. Kidnapping is generally viewed as a GI crime, as the statutory definition speaks only to "Actus Reus." Therefore, evidence of potential voluntary intoxication would not serve as a valid defense so as to excuse the conduct - there simply is no Mens Rea to negate!*
- *Involuntary Manslaughter is discussable (arguing that the conduct is more akin to Criminal Negligence).*

END (SFW)

Q2 ISSUE OUTLINE PROF. COMMENTS

State v. Joe (Attempted Murder)

*The only theory re Attempted Murder must rest upon proof of **express intent to kill**. The prosecution must prove that Joe acted with the requisite mens rea (mental state) of Intent to Kill. In other words, all forms of Attempted Murder rely on the theory of Express ITK.*

*All "attempt" crimes are measured by **specific intent** and this will likely be proved by resort to circumstantial evidence tending to show that Joe took a "**substantial step**" toward committing the target crime of Murder.*

Students would be expected to cite to facts that lend support as follows: Use of a deadly weapon, coupled with Joe's verbal expression, "Stop or I'll kill you, ..." Joe's movements prior to the shot fired could also be cited as support of ITK. Premeditated Attempted Murder is an unlikely theory here - in light of the mitigating factors/facts supporting that Joe was potentially acting in self-defense (Brad is an intruder inside Joe's castle).

State v. Joe (ADW)

*This would be a fallback or alternative charge - Joe likely caused Brad to **experience apprehension** (the General Intent form of Assault). The pistol would qualify as a deadly weapon. Was this also an "Attempted Battery-type" assault? Yes, as Joe took aim (inference) **intending to cause an offensive contact**.*

Defenses Asserted by Joe

Expected discussions would be Defense of Property, Defense of Self and Crime Prevention. Here, Joe used deadly force. Was this authorized under these circs? Brad was on his way out of the home at the time of the shot and there is no clear proof that Joe saw the sheath on Brad (good point of contention here).

State v. Brad (Attempted Murder)

9. **True.** One cannot be culpable for any crime under an "inaction," "omission" or "refraining to act" theory unless there is a legal duty to act. The law does not punish mere thoughts. There is no evidence of "creation of peril" here so mere inaction will not result in any form of culpability.

10. **True.** The term "breaking" means to open or put aside some part of the building for the purpose of entry. It is not necessary that any degree of force be used.

END

1)

Crimes Committed - Rick

Battery(aggravated)

F/A
⊕

Battery is a willful, intentional, non-consensual act causing harmful or offensive touching. Battery can be elevated to aggravated if committed in a particularly aggressive manner or with the use of a deadly weapon. Here, Rick came up behind Sally and struck her on the top of the head with a beer bottle. A beer bottle can be deemed a deadly weapon due to risk of injury when used in a violent manner. The facts support that Rick knowingly obtained the bottle, approached Sally, and chose to strike her with said bottle.

It is likely that Rick will be held culpable for aggravated battery. However, it could be argued that Rick was acting in defense of others (Tim). That determination would be left up to the trier of fact.

Assault(aggravated)

✓
good

Assault is a willful, intentional, non-consensual act causing reasonable apprehension of harmful or offensive touching. Assault can be elevated to aggravated assault if committed in a particularly aggressive manner or with the use of a deadly weapon. Here, Sally was not aware that Rick had walked up behind her with a beer bottle, intending to hit her over the head with it. This creates a point of tension in the fact pattern because Rick could argue that Sally was incapable of experiencing apprehension of imminent harmful or offensive contact if she was not aware that she was about to be harmed. However, it is reasonable to assume that after being hit, dropping her weapon, Sally experiences apprehension of imminent harmful or offensive touching, specifically when she was picked up, and carried away by Rick against her will.

Therefore, it is likely that Rick will be charged with Aggravated Assault.

Kidnapping

F/A (+) Kidnapping is the unlawful confinement of another person that includes either (1) asportation of victim; or (2) concealment of victim in a "secret place". Here, Rick picked up Sally, caption, and carried her away, asportation, while she kicked and screamed. It can be reasonably inferred that Rick's conduct was unlawful due to the lack of consent by Sally evidenced by her kicking and screaming while he carried her away to Tim's vehicle.

Therefore, it is likely that Rick will be charged with kidnapping.

Homicide

Homicide is the killing of a human being by another.

Causation

W/done Well done! In order for culpability of common law murder to attach, one must prove that the defendant is the actual and proximate cause of the death of another. Actual cause can be tested in several ways (1) but for test; and (2) substantial factor test. Here, but for Rick's conduct in the back of Tim vehicle, Sally would not have exited Tim's vehicle and died on the street. The facts do not allude to how Sally died, whether it be from a wound acquired from exiting the vehicle at 25 mph, pre-existing illness, or the conduct of Rick in the back of the vehicle. If the trier of fact discovers that the scuffle that took place in the back of Tim's vehicle resulted in the death of Sally by the conduct of Rick, then Rick would be the but for cause of Sally's death. ex. But for Rick's offensive conduct in the back of the car and kidnapping of Sally, Sally would not have exited the vehicle in a dangerous manner to escape. Rick was also a substantial factor in the death of Sally because his conduct... Proximate causation can be tested by foreseeability and natural and probable

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+
{
- outcomes of defendants conduct. It is reasonably foreseeable that someone how has been assaulted, battered, and kidnapped, would attempt to flee in any manner possible, whether responsible or not. Therefore, Rick is the proximate cause of Sally's death. If the death of another occurs and the defendant is both the actual and proximate cause of the death, then culpability for murder may attach.

Murder

4 Common Law murder is the unlawful killing of another with malice aforethought. The four malice theories are as follows; (1) intent to kill - expressed malice- which warrants murder in the first degree (2) Intent to cause GBI - implied malice - 2nd degree murder (3) willful wanton disregard for human life/depraved heart/extremely reckless or negligent behavior causing death - implied malice - second degree (4) felony murder - any murder that occurs during commission or flight of an enumerated felony. The enumerated felonies are, burglary, arson, robbery, rape, and kidnapping. Felony murder can also be charged in the first degree. 1st degree murder requires premeditation and deliberation.

if premeditated - deliberate

Attempt,

(1) intent to kill - expressed malice

Here, the facts do not support that Rick expressly intended to kill Sally. It could be implied through his conduct but in order to constitute murder in the first degree, there must be expression through words and conduct, not conduct alone. Unless in the case of felony murder (see below).

(2) Intent to cause GBI - implied malice

(3) willful wanton disregard for human life/depraved heart/extremely reckless or negligent behavior causing death - implied malice

(4) felony murder - any murder that occurs during commission or flight of an enumerated felony. The enumerated felonies are, burglary, arson, robbery, rape, and kidnapping.

facts support crime is ongoing

Here, Sally's death took place during the commission of Rick's kidnapping of her. Since kidnapping is an enumerated felony, this malice theory may attach culpability for murder in the first degree to Rick.

Therefore, felony murder malice theory would successfully attach culpability for murder to Rick.

Defenses

Defense of others

Re Battery

Rick may claim that he hit Sally over the head with the beer bottle in an attempt to stop her from harming Tim. The facts support that after an argument between Tim and Sally intensified, Sally yielded a switchblade, waved it at Tim and backed him into a hallway leading to a set of restrooms. It is reasonable to infer Sally's conduct caused apprehension in Tim, witnessed by Rick, causing him to act with proportionate force to stop Sally from harming Tim. Prosecution might argue that Sally could have been subdued in other reasonable manners besides hitting her over the head with a beer bottle.

Deadly Force Rule?

This defense might be successful in mitigating culpability for Rick's charge of aggravated battery, but it is unlikely that it will prevail in defense of his charge of kidnapping. At the time that Rick picked up Sally and initiated the kidnapping, she had already dropped her weapon and was otherwise incapacitated "stunned sufficiently"

Intoxication

good point

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Voluntary intoxication

Voluntary Intoxication can be used as a defense to specific intent crimes, while involuntary intoxication can be used as a defense to all crimes (general and specific). Here, the facts support that Rick, Sally, and Tim were at Rocco's Bar and had been there for some time, playing darts and "consuming large quantities of beer", constituting that their intoxication was voluntary in nature. Rick may claim that he did not possess the requisite mens rea necessary to commit murder in the first degree, aggravated battery, and aggravated assault.

Voluntary Manslaughter

Not an intentional death

Rick might argue that the murder of Sally was done in the heat of passion and with adequate provocation in an attempt to mitigate his charge of Felony Murder down to Voluntary Manslaughter. This defense would likely be unsuccessful since Rick had a substantial cooling off period once Sally dropped the switchblade and was no longer a threat, and while he carried her to the vehicle.

Involuntary Manslaughter

still a prox. cause

Rick might argue that Sally died from her impact with the ground after exiting the 25 mile per hour moving vehicle...

This argument would likely not prevail.

Crimes Committed - Tim

Accomplice Liability

✓
An accomplice is one who aids, abets, encourages a principle to commit a crime. All co-conspirators are accomplices, not all accomplices are co-conspirators.

Conspiracy

✓
Acting
in
concert

Conspiracy is an agreement between two or more people with the intent to commit a target crime. Common law conspiracy attaches at the time of agreement (the meeting of the minds) while modernly, conspiracy culpability attaches once there is an overt act in furtherance of the target crime. Tim expressed consent through his conduct of following Rick and Sally to his vehicle, not stopping Rick, and driving away with Sally in his vehicle. F/A (+)
The Pinkerton Rule provides that all co-conspirators are culpable not only for crimes committed pursuant to the conspiracy, but all other crimes committed by co-conspirators in furtherance of conspiracy and/or crimes committed by co-conspirators that are a foreseeable outgrowth of the conspiracy. It could be argued by prosecution that Tim is culpable for all crimes committed after agreement via his conduct by following Rick and Sally to his car and driving away.

Therefore, it is possible that conspiracy culpability may attach to Tim for the kidnapping and subsequent murder of Sally under the Pinkerton Rule.

Defenses

Tim might argue that he never agreed to assist Rick in the kidnapping and assault of Sally, however, Tim expressed consent through his conduct of following Rick and Sally to his vehicle, not stopping Rick, and driving away with Sally in his vehicle.

It is unlikely that Tim would avoid accomplice liability for the kidnapping and subsequent murder of Sally.

Conclusion

Rick will likely be charged with kidnapping, aggravated assault, aggravated battery, and felony murder in the first degree of Sally.

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Tim will possibly be charged with conspiracy as an accomplice to Rick for kidnapping and murder of Sally.

END OF EXAM

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2)

Defenses of Joe

Attempted Murder

An attempt is defined as having the specific intent to commit the crime and taking an overt act to do so.

Joe will argue he did not have the requisite intent, malice aforethought, to commit the crime of murder. He will argue his intent was to fire a warning shot at an intruder in his home as evidenced by him shouting "stop or I'll kill you."

Joe will also assert he was acting in self defense. A person is allowed to use deadly force when faced with imminent bodily injury or death. Joe will argue a reasonable person would have believed Brad to be an intruder in their home and used deadly force to prevent the potential death or bodily injury an intruder might cause. He must provide evidence he personally reasonably believed to be under threat of imminent bodily harm or death and a reasonable person would have as well.

Defense of property: would not be an available defense as deadly force is never legal

Assault with a deadly weapon

Intent to commit a battery Or intentional conduct that creates fear in the mind of the victim of imminent bodily harm or offensive contact

Joe will assert he lacked the intent to commit a battery as he fired a warning shot. He will also assert self defense see supra.

People V. Joe

Attempted Murder

Joe could reasonably be charged with attempted murder. In order to be charged ✓
prosecution must prove he had the requisite mental state of malice intent to kill and took
an overt act to do so. It can be inferred from the facts Joe heard Brad in his home and F/A
grabbed his pistol before confronting Brad. The prosecution would argue once Joe saw (+)
Brad a person he knew stealing his things he formed the requisite mental state of intent to
kill. By firing a shot Joe took a sufficient an overt act towards the crime of murder. The OK
use of a deadly weapon creates a direct inference of intent to kill.

Assault with a deadly weapon

Intent to commit a battery Or intentional conduct that creates ✓
fear in the mind of the
victim of imminent bodily harm or offensive contact

Joe could reasonably charged with assault with a deadly weapon as he confronted Joe with
a pistol and shouted "stop or i'll kill you." A reasonable person would fear imminent
bodily harm or offensive contact and thus Joe could be guilty of assault using a pistol
(deadly weapon) on the general intent charge of assault.

People V. Brad

Attempted Murder

✓ An attempt is defined as having the specific intent to commit the crime and taking an
overt act to do so.

Brad could reasonably be charged with attempted murder. The prosecution would have to
prove he had the requisite mental state of intent to kill. They will assert by yelling "i'll kill

tests
used?

conduct words B acted impulsively
you" and throwing a deadly weapon there is sufficient evidences of mens rea and actus rea for an attempted murder charge. The prosecution will also argue that an inference can be made from the facts of Brad already having a criminal mindset and wished ill will towards Joe as he had decided to enter into his home and steal the television set. Brad could reasonably believe the person who fired a shot at him, while he did not see who it was, was Joe and thus his act of throwing a knife (direct inference of intent to kill when using a deadly weapon) was intended to kill Joe. Sufficient evidence of intent and an overt act.

Assault with deadly weapon

Intent to commit a battery Or intentional conduct that creates fear in the mind of the victim of imminent bodily harm or offensive contact

Brad could reasonably be charged with aggravated assault as he committed a battery with a deadly weapon see below. Brad had the requisite mental state as his intent can be inferred from him yelling "I will kill you." careful!

Aggravated Battery

Intentional use of unlawful force against another causing bodily injury or offensive contact

Brad could reasonably be charged with aggravated battery as he intentionally used unlawful force by throwing a deadly weapon, a hunting knife after yelling "i'll kill you" further demonstrating his intent to cause harm. The knife caused serious bodily injury to Joe.

Larceny (Theft)

TV or Laptop?

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Trespassory taking and carrying away of personal property of another with intent to permanently deprive. Intent measured at the time of taking.

Brad could reasonably be charged with larceny. A person can be convicted of a trespassory taking should they not be in constructive possession of their own items at the time of the taking. Joe was borrowing the laptop and therefore in constructive possession of the laptop when Brad took it. Brad's intent to permanently deprive can be inferred from the fact he arrived at the home with the intent to take the laptop back. A carrying away or asportation occurred when he carried the laptop to the front door.

Under the same elements Brad will be guilty of larceny of the television set as he intended to steal and even a small movement of an object can be sufficient asportation. He carried the television set to the door with the intent to permanently deprive.

Burglary

Burglary breaking and entering of a dwelling house of another at night with intent to commit a felony

Brad could be reasonably be charged with burglary given elements of larceny are met.

Brad entered the home through an unlocked door. This would be sufficient evidence of breaking as it is defined as the opening of anything closed.

Brad entered a dwelling house of another; Joe's home.

Modernly we have done away with "at night" and a burglary can occur at any time of day

Brad's intent was to commit a felony despite being the rightful owner of the computer his intent was to commit a theft as he was not in constructive possession at the time.

Defenses of Brad

Attempted Murder

An attempt is defined as having the specific intent to commit the crime and taking an overt act to do so.

Brad will argue he lacked the requisite intent of malice to be guilty of attempted murder.

Brad will argue he was acting in self defense and reasonably believed he was at risk of serious bodily injury or death and thus privileged to use deadly force. Brad would assert a reasonable person who heard a shot in their direction and the words "stop or i will kill you" would believe they were under attack and use deadly force as a self defense.

Assault with deadly weapon

Intent to commit a battery Or intentional conduct that creates fear in the mind of the victim of imminent bodily harm or offensive contact

Brad will assert self defense see supra

Larceny/Burglary

Brad will assert he cannot be guilty of Larceny and therefore cannot be guilty of burglary as he was the rightful possessor of the laptop.

What crimes should each be convicted of?

Joe

Joe should not be guilty of attempted murder. There is insufficient evidence of malice intent to kill for an attempt conviction given he shouted "stop or i'll kill you." An

makes it conditional?

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Brad, yes
Joe, ... ?

inference can be made these are men who hunt and the shot he fired at Brad was purposefully aimed to warn him and not kill him.

✓ Joe should not be guilty of aggravated assault as there is sufficient evidence he was acting in self defense believing an intruder to be in his home. A reasonable person under the same circumstances would have responded with deadly force if they heard an intruder in their home stealing their things.

Brad

Brad should be convicted of both attempted murder and aggravated assault with a deadly weapon. There is sufficient evidence of concurrence of actus rea and mens rea for both charges. Brad was aware he was in Joes home so an intent to kill Joe can be inferred by his use of a deadly weapon and the plausibility of him knowing who he was throwing a weapon at.

Brad should also be convicted of larceny and burglary. He was not in constructive possession of the laptop. Therefore at the time of breaking (the opening of the closed door) his intent was to permanently deprive Joe of the laptop therefore commit a felony.

There was sufficient intent to steal and asportation for larceny charges of both the television set and the laptop.

Baila - Bailee ?

END OF EXAM

+ Good Command - facts
law
- organization - starting
with defenses
- Attempt 1-R-A-C