

Kern County College of Law
CRIMINAL LAW
Midterm Examination
Fall 2021
Prof. D. Kinnison

General Instructions:

Essay Questions: Answer Three (3) Essay Questions

Total Time Allotted: Three (3) Hours

Question 1

David broke into the home of Arnold. No one was at home. After taking several expensive items, David attempted to flee from Arnold's house. However, just as David was climbing out of a side window, Arnold arrived home from a hunting trip. Arnold yelled at David to stop, but David began to run down the street. Arnold grabbed his hunting rifle, and attempted to shoot David in the leg. The bullet missed David, but killed Bill, who was driving a car down David's street. Edith, Bill's wife, was also in the car and suffered a stroke after seeing her husband get shot.

Fred, a passerby, opened the Bill's driver side door with the intent to assist the occupants. Seeing the bullet wound in Bill's chest, Fred decided that there was nothing he could do to help. However, Fred noticed that Bill was wearing an expensive watch, and began to remove it from Bill's wrist. Bill opened one eye and faintly motioned Fred away. Fred took the watch off of Bill's wrist, saying "You won't need this where you are going, my friend." Moments later, Bill died.

Subsequently, Arnold, David and Fred were apprehended by police.

What crimes were committed and by whom?

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Question 2

Dan was in despair over the state of his business because of unfair business practices by Joe, who had opened a store in direct competition with Dan, right across the street. It appeared the Dan would soon be forced out of business. Dan confided in his good friend, Sam, about his gloomy future, telling him, in half-jesting fashion, that if he were a real friend he would “take care” of Joes and save him from bankruptcy.

The next day Sam, having thought on the plight of his friend, decided to help Dan. To do this, Sam planned to have his court-placed ward, Ace, a 27-year-old mentally ill man, break into Joe’s store and pour syrup onto Joe’s merchandise. Sam explained to Ace that he must put on a skeleton costume, and when it was dark he should go into the store Sam would point out and pour the syrup all over everything.

The next day, Sam told Dan about his plan. Dan replied, “Sounds great, but don’t ask me to do anything to help.” Sam replied, “All you have to do is sit back and let it happen.”

Late the next evening, Sam took Ace to the block where Joe’s store was located. Sam pointed out Joe’s store, and Ace proceeded toward it. Before getting to Joe’s, however, Ace heard a loud scream that frightened him. Disoriented, Ace broke into a business place adjoining Joe’s, whereupon he simply hurled the unopened bottle of syrup toward the rear of the store. Unfortunately, the bottle of syrup hit a gas line, causing an explosion that killed Joe, who was in his store taking his end-of-month inventory. The blast also knocked out Ace.

The police arrested Ace. Without being asked any questions by the police, Ace voluntarily told the police what he was doing there and why.

Discuss what charges Sam and Dan might face, and the possible results.

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Question 3

Alan called Bruce on the phone. Alan said, "Hey, Bruce, this is Alan. I'm going to hit Sunnyside Jewelers tonight. If you want to help me, I'll cut you in for a 50 percent share. I'll be over at ten o'clock." Bruce said, "Sounds interesting, see you then."

Alan arrived at Bruce's apartment at ten o'clock. The two of them hurriedly drove toward the store. As they neared it, Bruce said, "I've changed my mind. You go ahead if you want, but stop the car and let me out." Alan did so, and then continued on to the store. Bruce paused at a phone booth, intending to report Alan to the police, but changed his mind and walked directly home.

Alan then went to the jewelry store, entered with a master key, and emerged shortly afterward carrying a bag of stolen jewelry. Carl, an off-duty policeman was walking by and suspected Alan of stealing from the jewelry store. Carl approached Alan, and demanded to see what was in the bag. Alan turned away, and Carl attempted to grab the bag with the jewelry in it. Alan struck Carl with his fist, and started running. Carl pulled out a gun, and fired a shot that missed Alan. Denny, a body-builder walking to the nearby gym, heard the shot, saw Alan running and Carl with a gun in his hand. Denny decided to defend Alan, by attacking Carl, hitting Carl on the arm with a piece of metal he found on the sidewalk. During the altercation, Carl suffered a broken arm.

Alan was arrested by police before he made it home.

Discuss the crimes, if any, that Alan, Bruce, and Denny may be charged with.

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Question 1 Model Answer

Crimes of Arnold

Murder

Arnold could be charged with murder for Bill's death. A murder occurs when the defendant kills another human being with malice aforethought, which is either the intent to kill or to cause serious bodily harm.

Although Arnold would argue he was attempting only to shoot David in the leg, an intent to cause serious bodily harm could be inferred from Arnold's use of a hunting rifle. Even though Arnold may not have been aware of Bill, under the transferred intent doctrine (when a person intends to commit a particular crime against one individual, but inadvertently commits the same or a similar crime against another person, the person's intent is deemed transferred from the intended to the actual victim), Arnold's desire to shoot David would be transferred to Bill.

It is highly unlikely that the prosecution would be able to prove first-degree murder, which requires premeditation, deliberation and willfulness. On the other hand, the state could assert that Arnold is guilty of second-degree murder because he evidenced a wanton mens rea (consciously engaged in conduct that he knew, or should have known, posed a high probability of death or serious injury to other human beings), by shooting at David while other persons were in the vicinity. Courts have generally been more willing to find such mens rea where a firearm is involved; there is even some suggestion that handling a firearm, at least when one knows it is loaded, is recklessness or worse. It is unclear from the facts whether Arnold should have recognized the likelihood of hitting someone other than David (this determination would depend on facts such as how good a marksman Arnold was, how far David was from Arnold, how obvious Bill's presence was to Arnold, etc.).

Given the dangers involved to other persons with a shooting in a residential area, it seems likely that Arnold would be found guilty of second-degree murder.

Voluntary Manslaughter

Voluntary manslaughter is found where what would otherwise constitute murder is reduced to voluntary manslaughter as the result of adequate provocation that would arouse in the ordinary person sudden and intense passion that would cause loss of self-control.

Adequate provocation is probably NOT applicable, because a reasonable person would not think of killing another merely because the latter had stolen the former's property. Therefore, Arnold's killing of Bill would likely NOT be reduced from murder to voluntary manslaughter.

Involuntary Manslaughter

The state could also contend that Arnold at least acted recklessly (engaged in conduct that posed a substantial risk of death or serious bodily injury to other human beings) by shooting at David while other persons were in the vicinity and, therefore, is culpable of involuntary manslaughter.

In response, Arnold could contend that the shooting was privileged under the "fleeing felon" justification. Traditionally, a private citizen can use force capable of causing death or serious bodily injury to prevent a felon's escape. Today, however, many jurisdictions require that the felon must have been engaged in a "dangerous felony" (one that involved a risk or likelihood of serious physical harm to others) for this privilege to apply. Assuming that David's conduct constituted a felony (discussed below), under the traditional view, Arnold's shooting would be privileged. Even under the modern view, Arnold could still contend that burglary is arguably a "dangerous" felony, because there is always the risk that the occupant of the home that was invaded would return and a physical confrontation could then result. However, the state could argue in rebuttal that Arnold was aware that David's conduct had not posed a risk of serious harm to others because the house had been vacant during David's larceny and any "confrontation" was brought on by Arnold, because David was running

away. Furthermore, even if a confrontation were possible, it is dubious whether an expectable confrontation would involve firearms. Assuming the modern view is followed, the fleeing-felon justification would probably NOT be available to Arnold.

The defense-of-property privilege is not applicable, because one can never exercise force capable of causing death or serious bodily injury to protect property.

Attempted Murder/Assault by Arnold's as to David

Arnold probably also could be prosecuted for the attempted murder of David (the crime of attempt occurs when the defendant has taken a substantial step toward completing the target crime with the intent to commit that crime). Arnold's shooting at David with his hunting rifle arguably constitutes attempted murder, because Arnold should have recognized that there was a substantial certainty that if his bullet struck David, David could die or be seriously injured. On the other hand, attempt requires that the defendant "intend" the consequence, and even if Arnold was reckless, the facts will not support a contention that he intended death.

Alternatively, Arnold could be charged with attempted battery and assault of David, because Arnold presumably placed David in fear of imminent injury when he heard Arnold's original shot. (It is unclear from the facts whether David saw Arnold pointing the rifle at him.)

Assault/Battery by Arnold as to Edith

The state could charge Arnold with battery for the stroke suffered by Edith. A battery is usually defined as intentionally or recklessly causing bodily injury to, or an offensive touching of, another person. Even assuming that (1) Arnold's intent toward David could be transferred to Edith (which is unlikely, because the harm suffered by Edith was dissimilar which Arnold desired to cause David), or Arnold's conduct could be characterized as reckless, there was no physical contact with Edith. Therefore, Arnold probably could not be convicted of battery against Edith.

An assault occurs where the defendant either attempts battery, or intentionally places the victim in fear of imminent injury. Edith probably feared for her own life when she saw that Bill was suddenly shot. Here, the transferred intent doctrine might apply because the harm suffered by Edith (fear of imminent injury) would be the same or similar to that suffered by David. Many writers, and some courts, think that the doctrine should be limited, if not abolished, and that a defendant should be guilty of attempted murder (or assault, here) as to his actually intended victim, and a reckless or other level of crime as to the actual victim. If the transferred intent doctrine is found not to apply, an assault conviction cannot be sustained because reckless conduct will not suffice to support a conviction for assault.

Crimes of David

Murder/Manslaughter

David will not be liable for first-degree murder, due to the absence of premeditation. But the state could charge David with second-degree murder of Bill under the felony-murder rule (under which a defendant is deemed to have the mens rea for murder, even though he did not intend or desire the victim's death, when, during or as a consequence of the defendant's perpetration of an independent, inherently dangerous felony, a homicide occurs).

Felony murder may apply if David is found to have committed burglary, discussed below. However, David could assert that (1) Arnold's intervening conduct extinguished the causal connection between the burglary and Bill's death, and (2) under these facts David was not engaged in an "inherently dangerous" felony because he was exiting a previously unoccupied home with several items. Courts differ as to whether, in determining if a felony is "inherently dangerous", they should look at the crime "in the abstract" or "as perpetrated." Here, the state could respond that (1) the causal connection was not broken by Arnold's conduct, because it is reasonably foreseeable that the occupants of a burglarized home might return before the intruder left, and (2) if this occurs, there is the possibility of a violent confrontation between the burglar and the returning occupant. Although these are close issues, the state would probably prevail.

If David's burglary is NOT deemed to be an "inherently dangerous" felony, the state could contend that David is culpable of involuntary manslaughter under the misdemeanor-manslaughter rule (under which the defendant is liable as though he had the mens rea for involuntary manslaughter when a homicide occurs as a consequence of, and in the course of, the defendant's perpetration of a felony that is not inherently dangerous, or of a misdemeanor other unlawful act). While David again would contend that there was not a sufficient causal connection between his conduct and Bill's death, a conviction probably would result if this doctrine were applied.

Burglary

The state could also charge David with burglary. At common law burglary was the trespassory breaking and entering of the dwelling of another at night with the intent to commit a felony therein. Under modern statutes, intent to commit theft is sufficient, and the entry need not occur at night, among other changes not here pertinent.

If the state cannot show all of the elements of burglary, David could be successfully prosecuted for larceny.

Crimes of Fred

Robbery

Robbery occurs when the defendant commits a larceny by taking property from the person or presence of the owner using force or threat of force. Because Bill protested the removal of his watch, the state would likely argue that Fred obtained the watch by force. However, force requires more than the physical act of taking the item. Fred would likely argue that he neither used physical force nor threatened the same against Bill. Rather, Fred simply took the item, and given Bill's feeble condition neither force nor threats were required. Fred is probably not going to be found guilty of robbery.

Larceny

Even if robbery is not found, Fred will likely be found guilty of larceny for the taking of Bill's watch. Fred removed the item with the intent to permanently deprive Bill of the item. The larceny was completed by the movement of the item before Bill's death shortly thereafter. Even if asportation were to be considered incomplete at the time of Bill's death, the ownership of the watch passed to Bill's heirs at the time of his death. Thus Fred would be found guilty of larceny.

Question 2 Model Answer

Crimes of Sam

The state could charge Sam with solicitation, conspiracy, burglary malicious mischief, and murder.

Solicitation

Solicitation occurs when the defendant requests or encourages another to commit a crime with the intent to induce the latter to perform the crime. When Sam asked Ace to break into Joe's store and pour syrup on the merchandise, a solicitation probably occurred. Because the crime of solicitation is complete once the defendant makes his request, Sam will probably be convicted of solicitation.

Conspiracy

The crime of conspiracy occurs where there is an agreement between two or more persons to commit a crime. The state could contend that because Sam and Ace agreed that Ace would enter Joe's store and pour syrup over Joe's merchandise, Sam is guilty of conspiracy to commit malicious mischief (intentional or reckless injury to or destruction of property of another) and/or burglary (see definition in question 1, above).

Sam may argue that because Ace was mentally ill, he did not know the nature and quality of his actions and did not know what he was doing was wrong, and therefore is legally insane. The use of the skeleton costume, which would draw more attention to him than regular clothes, suggests that Ace did not sufficiently appreciate that he was helping Sam in the commission of a crime. Further, the fact that Ace was placed with Sam by a court for his care indicates that Ace is likely not capable of understanding the basics of criminal conduct. Because conspiracy requires the participants to share the specific goal of criminal conduct, it is unlikely that Sam could be convicted of conspiracy.

The state could argue that under the MPC's "unilateral" theory of conspiracy, Sam could be guilty of conspiracy even without Ace being a conspirator, because under this theory only one party's intent is necessary to find the conspiracy.

Burglary

Causing an innocent or incompetent person to engage in conduct constituting the actus reus portion of a crime is considered to be the use of an instrumentality by the defendant. Because A was Sam's court-placed ward, Ace appeared incapable of handling his own affairs, Ace would be considered an instrumentality of Sam, and Ace's conduct would be attributed to Sam.

At common law, burglary was the trespassory breaking and entering into the dwelling of another at night, with intent to commit felony therein. Modern laws have eliminated several of those elements, and the intent may be to commit theft. If the jurisdiction's burglary statute provides for non-residential burglary, Sam will likely be found guilty of burglary.

Malicious Mischief

As discussed above, Sam's act of directing Ace to act as instructed may constitute malicious mischief (defined above). Sam may argue that since Ace did not follow his instructions, he should not be found guilty of this crime. However, the state would likely prevail with the argument that the actions taken were reasonably foreseeable.

Arson

At common law, arson is the malicious (either intentional or reckless) burning of the dwelling of another. Modern statutes extend the crime of arson to the burning of any structure.

If the jurisdiction follows the modern view, the state could argue that Ace's actions under Sam's directions would lead to Sam's conviction for arson.

Sam could argue that the explosion was the result of negligent, not reckless conduct, in that the throwing of an unopened bottle of syrup at the darkened portion of a store could not be deemed as conduct that created a high probability of causing an explosion or fire). Therefore, the malice element for arson is lacking, and thus no arson conviction could result.

Second-Degree Murder

The state could charge Sam with second degree murder under the felony-murder rule (under which a defendant is deemed to have the mens rea for murder, even though he did not intend or desire the victim's death, when, during or as a consequence of the defendant's perpetration of an independent, "inherently dangerous" felony, a homicide occurs).

Sam would be able to argue that felony-murder would not apply since the element of commission of an "inherently dangerous" felony is absent. Further, Sam would argue that he should not be held liable for the unintended and/or unforeseeable actions of an innocent or incompetent person. Because Sam only instructed Ace to pour syrup over merchandise, the throwing of the bottle could not have been reasonably foreseen by Sam, making Sam not liable for that action. Finally, Sam could assert that the proximate cause between the alleged felony and Joe's death is lacking, in that it was not reasonably foreseeable that throwing an unopened bottle of syrup toward the rear of a closed store would strike a gas line and cause an explosion resulting in the death of an unknown person next door. Sam probably would NOT be convicted of second-degree murder.

Involuntary Manslaughter

The state might assert that Sam is guilty of involuntary manslaughter by directly causing Joe's death through possessing a reckless mens rea (undertaking conduct that posed a substantial risk of death or serious injury to others). The state would claim that because there is always the possibility that a mentally-challenged individual will behave in a manner that creates a life-endangering situation to others, Sam acted recklessly by choosing Ace to commit malicious mischief. In rebuttal, Sam could contend that, assuming Ace had no prior history of violent conduct, Sam did not act recklessly in assuming that Ace would refrain from engaging in life-threatening behavior. Thus, Sam probably would NOT be convicted of involuntary manslaughter simply because he selected Ace to ruin Joe's merchandise.

The state could alternatively contend that Sam should be convicted of involuntary manslaughter under the misdemeanor-manslaughter rule (under which the defendant is deemed to have the mens rea for involuntary manslaughter, even though the defendant did not desire or intend the victim's death, if the death occurs accidentally in the course and as a consequence of the defendant's perpetration of a misdemeanor). With respect to the existence of a misdemeanor, Ace is probably guilty of attempting to commit malicious mischief to Joe's merchandise. However, Sam could contend that the necessary proximate cause between Ace's attempted misdemeanor (breaking into a store, though the wrong store, for the purpose of pouring syrup on Joe's merchandise) and Joe's ensuing death is lacking. Thus, no conviction under the misdemeanor-manslaughter rule appears likely.

Crimes of Dan

Solicitation

The state could charge Dan with conspiracy. It would argue that Dan's suggestion to Sam that someone should "take care" of Joe's constituted a solicitation. However, Dan would probably argue successfully that (1) no specific illegal conduct was requested – "take care of" was vague, and could include legal conduct, such as the purchase of Joe's business, and (2) assuming Sam had no prior history of criminal behavior, Dan probably did not expect Sam to undertake illegal activity based on his casual statement

(especially because the facts indicate that Dan's statement was made in a half-jesting manner).

Conspiracy

Conspiracy is an agreement by two or more people to commit a crime, with specific intent that the crime be committed.

The state could argue that since Sam told Dan about his plan to have Ace break into Joe's store to damage Joe's merchandise, Dan became a part of a conspiracy when he responded "Sounds great." Sam will counter with the argument that he insisted that he not be required to do anything to help shows that he was not an active participant in the planned crime.

Conspiracy law requires an agreement to accomplish the same objective by mutual action. Since Sam did not agree to do anything to accomplish the target crime, he cannot be said to have agreed to mutual action. Instead he merely was aware that someone else planned to do a crime. Sam will likely NOT be found guilty of conspiracy.

Question 3 Model Answer

Crimes of Alan

Alan could be charged with solicitation, conspiracy, burglary, larceny, battery and robbery.

Solicitation

Solicitation occurs where a person requests or encourages another to join in the commission of a crime, with the intent to induce the latter to perform the crime. At common law it was a misdemeanor. Modern statutes often retain the crime of solicitation, but some restrict it to solicitation of serious felonies.

Alan may argue that he never asked Bruce to help him, but merely told Bruce he would share the stolen items if Bruce wanted to help. He may also argue that Bruce never explicitly agreed to help. The prosecution would counter that offering a share of the stolen property in exchange for help is

sufficient evidence of inducement. Further, there is no requirement that the person solicited agree to commit the crime. Alan would likely be found guilty of solicitation.

Conspiracy

Conspiracy occurs where two or more people agree to commit a crime, and intend that the crime be committed. Under modern law, most states require an overt act in the furtherance of the conspiracy.

Alan would argue that Bruce never agreed to commit the burglary, and therefore no conspiracy was committed. The prosecution would argue that Bruce's statement that he had "changed his mind" and wanted to not go forward with the burglary indicated that he had originally agreed to commit the burglary with Alan.

Alan may also argue that there was no overt act in the furtherance of the conspiracy, since they were apparently not in the immediate area of the store when Bruce decided he wanted out. The prosecution will argue that driving toward the store constituted an act in the furtherance of the conspiracy. Unlike attempt law, mere preparation is sufficient. Whether the driving toward the store was sufficient for attempt or not, it was clearly at least an act of preparation. Alan would likely be found guilty of conspiracy.

Burglary

At common law, a burglary occurred where the defendant had, in a trespassory manner, broken and entered into the dwelling of another, at night, with the intent to commit a felony therein.

Under common law, Alan would not be guilty of burglary, because the store was not a residence, under the facts as given.

However, modern statutes typically provide for burglary to include simple entry into a building with intent to commit theft or any felony. Under modern burglary laws, Alan would likely be charged with burglary.

Alan would likely argue that since he used a key, there was no “breaking”, or forcible entry, no burglary was committed. The prosecution would correctly argue that no “breaking” is required, in many jurisdictions. Under the modern trend, it is therefore likely that Alan would be found guilty of burglary.

Larceny

Under common law, larceny is the trespassory taking and carrying away of personal property of another with intent to permanently deprive the owner of such property.

Alan may argue that since he did not get home with the stolen jewelry, carrying away element of larceny is not satisfied. The prosecution will argue that asportation does not require reaching a place of relative safety. Rather, a slight movement of the property is sufficient for larceny. The prosecution’s argument is in accord with both common law and modern law. Alan will therefore be found guilty of larceny.

Battery

Under common law, as well as modern law, battery is the unlawful use of physical force against another person resulting in either bodily injury or an offensive touching.

Alan would likely try to argue that he was entitled to use force to defend the taking of his property. The law allows a person to use non-deadly force to defend against a taking of personal property from his or her presence. The prosecution would argue that the jewelry was not lawfully Alan’s, and that therefore he was not entitled to use force to retain it. Alan would likely be found guilty of battery.

Robbery

Robbery is the taking of personal property of another by force or threat of force, with the intent to permanently deprive the owner of the property.

Alan would likely argue that at the time he took the jewelry, there was no present against whom he used force or threatened with force. The prosecution would likely argue that force or threat of force used to retain property immediately after possession was obtained is sufficient for robbery. If not at common law, modern law supports the prosecution's argument above, and Alan would therefore likely be found guilty of robbery due to his striking Carl while leaving the store with the stolen jewelry.

Crimes of Bruce

Crime could be charged with conspiracy, and attempted burglary.

Conspiracy

Conspiracy is defined above.

Bruce may argue that he never agreed to do the burglary with Alan. However, the prosecution will argue that his statement that he "changed his mind" indicates a prior agreement to help commit the burglary.

Bruce may also argue the defense of abandonment of the conspiracy. At common law, once a conspiracy was committed, abandonment was not a defense. However, under modern law, a minority of states recognize the defense of abandonment of a conspiracy, if it was completely voluntary, and the person attempts to thwart completion of the crime. The prosecution will argue that most states do not recognize the defense of abandonment. Further, even if this is a state that does recognize abandonment, the failure of Bruce to attempt to thwart the burglary eliminates the defense of abandonment. Bruce will likely be found guilty of conspiracy.

Attempted Burglary

Attempt is committed by having a specific intent to commit the crime, and doing an overt act in the furtherance of that intent which is beyond mere preparation.

Bruce may argue that he never agreed to help with the burglary, but was merely thinking about it while on the way to the store. As mentioned above, Bruce “changed his mind” while on the way. That seems sufficient for finding an intent to commit the burglary.

The more difficult question is whether the act completed – driving toward the store – constituted an overt act beyond mere preparation. At common law the proximity test considered how close the person got to completing the offense. Modern majority rule changes the analysis to whether a “substantial step” was committed in the course of conduct to complete the crime.

Bruce will argue that mere driving toward the store, without arriving in the area, is insufficient for attempt. The prosecution will argue the opposite. Under the proximity test, Bruce will likely not be found to have committed attempted burglary. Under the “substantial step” test, while a closer call, merely driving toward has been held insufficient (see the Rizzo case out of New York). Bruce will likely not be found guilty of attempted burglary.

Crimes of Denny

Denny may be charged with battery.

Battery

As discussed above, under common law, as well as modern law, battery is the unlawful use of physical force against another person resulting in either bodily injury or an offensive touching.

Clearly, Denny used force against Carl. The issue is whether Denny the battery was justified under defense of others. The law allows force to be used in the defense of others. The majority rule allows the defense where there is the reasonable appearance of the right to use force. A minority of states hold that the person “steps into the shoes” of the person being defended.

In this case Alan was being attacked as a fleeing felon by an off-duty police officer. Alan would most likely not be found to be justified in using force against Carl, since he was engaged in larceny. Thus, under the reasonable appearance version of the defense of others rule, Denny's use of force might have appeared reasonable under the circumstances of deadly force being used against Alan, who did not appear to be using deadly force against Carl. However, under modern law, Carl's use of deadly force against a fleeing felon is reasonable only when the felon threatens death or serious bodily harm and deadly force is necessary to prevent his or her escape. The facts here do not indicate that Alan was presenting a risk of death or serious bodily injury to others. Therefore, under the reasonable appearance rule, Denny may be able to avoid culpability for battery.

The same result appears to be warranted even under the minority "step into shoes" rule. Since Alan's actions did not appear to present a threat of death or serious bodily injury to others, Alan would have been justified in using deadly force against Carl, in self-defense. Therefore, under the "step into shoes" rule Denny would likely be permitted to use the defense of others defense.

Denny is therefore NOT likely to be convicted of battery.

1)

In order for a crime to occur, there has to be mens rea (the culpable mindset), the actus reus (the guilty voluntary act), the combination of the actus reus and the mens rea, and causation.

David

What crimes were committed by David?

Burglary

Under common law, burglary is the breaking into a residence at night with the intent to commit a felony therein. Modern trend's version of burglary is the entering into a structure or residence with the intent to commit a theft or a felony therein. Under the modern trend, burglary can be either first degree burglary, which consists of one who breaks into the dwelling (car or vehicle), while second degree burglary is a commercial or non-residential property. Under the modern trend, there need not be a breaking or entering, the burglary need not be committed at a residence, and the burglary need not be committed at night. Burglary is a specific intent crime.

Here, David entered into Arnold's residence with the intent to commit a theft (David took several of David's personal items). In a jurisdiction where common law burglary was applicable, David would not be found guilty of burglary because there was no indication the burglary was committed at night. In a jurisdiction that applies the modern trend burglary definition, David would more than likely be found guilty of first degree burglary, as he entered into the residence with the intent to commit a theft.

Therefore, David will more than likely be found guilty of burglary in the first degree under modern trend. He would not be found guilty of burglary under the common law.

Larceny

Larceny is the asportation, the taking, and caption, the carrying away, of personal property without the owner's consent with the intent to permanently deprive the owner of that property. The property need be moved only slightly to be considered larceny. Under common law, larceny was considered a capital offense. Under modern trend, theft crimes typically aren't broken down into specifics and are under the general umbrella term of "theft." Under modern trend, caption and asportation need not be proven. Larceny is a specific intent crime.

Here, David committed a larceny when he took several of Arnold's expensive items and attempted to flee from the residence. He engaged in the taking of the personal property of another, and then engaged in the carrying away of the property, with the mens rea requirement to intend to permanently deprive the owner of their personal property.

David may argue that he was unsuccessful in the asportation of the property because he was caught as he was attempting to escape with Arnold's personal property. The state will argue that David had both the culpable mens rea, the intent to steal the property and the intent to permanently deprive Arnold of said property, and the actus reus (asportation and caption) for larceny, and he is therefore guilty. The state will argue that the act of asportation and caption caused Arnold to be deprived of his personal property.

Therefore, David will most likely be found guilty of larceny.

Causation - *should be discussed in the context of potential crimes*

Causation involves the proximate (legal) cause of a social harm and an actual cause (but-for cause) of a social harm.

Here, David would more than likely be considered the actual cause both Bill's death and of Edith's stroke, which she suffered as a result of seeing her husband get shot. Applying the cause in fact test, but for David burglarizing Arnold's residence, Bill would not have been shot and killed, and Edith would not have seen her husband get shot, therefore Edith would not have suffered a stroke.

David may argue that this was not a probably and foreseeable consequence of his breaking into Arnold's residence, particularly because one cannot use deadly force to protect property unless the one breaking in is violently or riotously attempting to enter the residence. This was not the case here; Arnold, although he stated he did intend to shoot David in the leg, used deadly force to protect his property. This is arguably not a probable and reasonable result of David's fleeing the scene after burglarizing Arnold's home.

Therefore, David will not be found guilty of causing the death of Bill or the battery of Edith.

Murder

Under common law, murder is the killing of a human being by another human being with malice aforethought. Under the common law, there were no degrees of murder — there was just a distinction between murder and manslaughter. Under the modern trend, the majority of states divide

murder into degrees. First degree murder is the killing of a human being by another human being with premeditation and deliberation. Second degree murder is the killing of another human being by another human being with malice aforethought lacking premeditation and deliberation. Second degree murder is also known as depraved heart murder, which constitutes a reckless disregard for human life.

It is possible, through causation, that but for David burglarizing Arnold's house, Bill would not have been killed. The state will argue that the burglary was the beginning of the chain of causation, and the chain of causation continued with the shooting death of Bill.

It is likely David will be found guilty of murder via causation.

Arnold

What crimes were committed by Arnold?

Involuntary Manslaughter

-6
Missed issues: Is burglary an inherently dangerous felony for FM rule?
- Involuntary manslaughter; if burglary was deemed not inherently dangerous.
(re: David)

Under common law, involuntary manslaughter is the killing of a human being of another human being without malice aforethought, typically as a result of criminal negligence and/or recklessness. Under modern trend, involuntary manslaughter is the killing of a human being by another human being without malice aforethought as a result of criminal negligence or recklessness where there is a reckless disregard for human life. Involuntary manslaughter is a general intent crime.

Here, upon arrival to his house, Arnold yelled at David to stop as he was attempting to flee. Arnold grabbed his hunting rifle and attempted to shoot David in the leg, but missed, killing Bill, who was driving his car down David's street. While Arnold certainly didn't intend to kill Arnold, the state may argue that he negligently discharged his firearm, causing the death of Bill.

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Recklessness required for involuntary manslaughter.

It is more likely that Arnold will be found guilty of involuntary manslaughter rather than murder, as he lacked the mens rea to kill. Arnold's intent was to disable David by shooting him in the leg.

Murder

Under common law, murder is the killing of a human being by another human being with malice aforethought. Malice aforethought can be described in four ways: intent to kill; intent to cause serious bodily harm; depraved heart murder; and felony murder. Under the common law, there were no degrees of murder — there was just a distinction between murder and manslaughter. Under the modern trend, the majority of states divide murder into degrees. First degree murder is the killing of

a human being by another human being with premeditation and deliberation. Second degree murder is the killing of another human being by another human being with malice aforethought lacking premeditation and deliberation. Second degree murder is also known as depraved heart murder, which constitutes a reckless disregard for human life.

Here, if the state could prove that Arnold shot Bill with the intent to kill, Arnold could be charged with second degree depraved heart murder. The state may argue that discharging a firearm inherently proves the intent to kill, and the requisite mens rea for second degree murder was present. Arnold will more likely than not argue that he lacked the culpable mens rea to kill and was only intending to disarm David.

missed issue: Intent to cause serious bodily harm may be sufficient mens rea for malice aforethought

While it is possible that Bill could be found guilty of second degree murder, it is more likely that he will be found guilty of involuntary manslaughter.

Transferred intent

Transferred intent applies here because although Arnold did not intend to shoot and kill Bill, he intended to shoot David. Transferred intent allows for the victim of a crime to make a case against a defendant who did not intend to hurt or kill them. Thus, Bill would be liable for the death of Bill.

Assault

Assault is the intent to cause imminent apprehension of a serious bodily harm or offensive touching beyond mere words. Under modern trend, most jurisdictions require a frightened victim and the reasonability of the assault to manifest into a battery. Assault is a specific intent crime.

Here, When Arnold shot the gun, he reasonably caused an imminent apprehension of serious bodily harm not only to Bill but to Edith. Edith, who was not shot, suffered a stroke as a result of seeing her husband get shot. She was inside the car that was driven by Bill who was shot, which would create a reasonable imminent apprehension of serious bodily harm.

Arnold will argue that he did not have the mens rea required to cause an imminent apprehension of serious bodily harm. The state will argue that by discharging a firearm, Arnold naturally created a reasonable apprehension of serious bodily harm to anyone who came into contact with the firearm directly or indirectly.

Ultimately, Arnold will most likely be found guilty of assault.

Battery

A battery is direct or indirect offensive touching or infliction of serious bodily harm upon another. Under modern trend, battery can be aggravated if a deadly weapon is used or if the battery is committed against a peace officer or child. Touching of someone's connected property is sufficient for a battery. Battery is a general intent crime.

Here, Arnold directly committed a battery when he discharged his weapon and the bullet struck Bill. The state will argue that Arnold caused a direct infliction of serious bodily harm when he discharged his weapon, while Arnold will argue he didn't intend to commit a battery.

More likely than not, Arnold will be found guilty of a battery.

Defenses

Arnold may argue defense of property. For defense of property, one may not use deadly force unless the property owner deems it reasonably necessary to use, and if the perpetrator entered onto the property in a violent or riotous manner.

Here, David was fleeing the residence and was not armed. Arnold may argue he was in fear of his life or he was in fear that David was armed and would put up a fight. The state will argue that deadly force cannot be used to protect property, and David was fleeing the residence — he put up no present fight to Arnold.

It is most likely a court will not uphold Arnold's defense of property

-3 missed issue:
Fleeing felon defense

Fred

What crimes were committed by Fred?

Larceny

Larceny is the asportation, the taking, and caption, the carrying away, of personal property without the owner's consent with the intent to permanently deprive the owner of that property. The property need be moved only slightly to be considered larceny. Under common law, larceny was considered a capital offense. Under modern trend, theft crimes typically aren't broken down into specifics and are under the general umbrella term of "theft." Under modern trend, caption and asportation need not be proven. Larceny is a specific intent crime.

Here, Fred will more than likely be found guilty of larceny. He opened Bil's driver side door with the intent to assist Bill and Edith. However, his intent shifted when he decided he could not help them,

and began to remove the watch from Bill's wrist. Fred, despite being notified by Bill that he did not want him to take the watch, continued to take the watch off Fred's wrist. He carried it away with the intent to permanently deprive the owner, despite dying moments later, of his personal property.

The state will argue that Fred had the intent to commit larceny and did so by taking the watch even after Bill attempted to stop him. Fred may try and argue that Bill attempted to give him the watch as a way to thank him for trying to help himself and Edith.

Ultimately, Fred will be found guilty of larceny.

~~-2~~ Missed issue: Robbery

Overall a good discussion.

2)

Discuss what charges Sam (S) and Dan (D) might face, and the possible results.

SOLICITATION

Solicitation is asking another person to commit a crime.

Here, S asked Ace to commit the crimes of burglary, trespass, and vandalism. Sam's plan was to have Ace break into Joe's store, without lawful purpose, and to have Ace ruin Joe's merchandise by pouring syrup on it.

Here, D could be considered an accomplice because he abetted S's plan when D told S, "Sound's great." > *Was this solicitation?*

Was Dan asking Sam to help with his business problem solicitation?

CONSPIRACY

Conspiracy, under common law, is when two or more persons agree to commit a crime. Under the modern rule, one or more of the suspects needs to make a substantial step in advancing their crime. The rule about conspiracy is, even if only one member of the group that conspired the crime commits a crime, all conspirators can be charged for conspiracy and the crimes

Here, S conspired with Ace, and D when he formed the plan. S can argue D was not involved in the planning, or actions, and therefore should not be charged for conspiracy. S may also argue that Ace was a ward of the state, and mentally ill, and may argue that Ace lacked the capacity to conspire, but that still leaves D as a co-conspirator.

missed issue - unilateral conspiracy? Not at common law, but modern trend

Here, D could be charged with conspiracy because he suggested S "take care of" Joe's business. D also expressly approved of S's plan. D may argue he did not agree, but that would fail under common law rules since he he approved of S's plan. Under the modern rule, D may argue he should not be charged with conspiracy because he did not take a substantial step in furtherance of the crime. That would fail because the rule about conspiracy is, even if only one member of the

group that conspired the crime commits a crime, all conspirators can be charged for conspiracy and the crimes *Too conclusory. Approval may not be enough to show agreement to conspire.*

They may apply the M'Naughten rule; claiming Ace could not appreciate the wrongfulness of his actions. Ace himself may not have appreciated the wrongfulness of his actions, but that does not excuse S and D from using Ace to achieve their unlawful endeavors.

BURGLARY

Burglary, under the common law, was defined as breaking and entering into a dwelling at night with intent to commit a felony therein. The modern rule applies burglary to dwellings at any time of day, and some jurisdictions include structures other than dwellings, such as commercial buildings and vehicles.

Here, S conspired to have Ace break into Joe's business. S should have reasonably foreseen the possibility that Ace, an mentally ill ward, may break into the wrong location. Even though Ace broke into the business next to Joe's, S can be charged with burglary. S can argue that he, himself, never broke into any of the businesses.

Here, D knew about S's plan to have Ace burglarize Joe's business, and should also have reasonably foreseen the possibility of Ace breaking into the wrong location. D can argue that he, himself, never broke into any of the businesses.

S and D can be charged with burglary.

-2 Missed issue - Would Malicious Mischief be sufficient for burglary rules?

VANDALISM

Vandalism is the intentional damaging or destroying of another's property.

S and D can be charged with vandalism because their plan and actions resulted in the damage and destruction of another's property.

-3 Missed issues - Ace went into the wrong store, not what Sam intended. ^{so wrong property was damaged}
Were Ace's panicked acts foreseeable? (causation)

TRESPASS

Trespass is the entering of another person's land without lawful purpose or permission.

S and D can be charged with trespass because their plan and actions resulted in Ace entering property without permission.

INVOLUNTARY MANSLAUGHTER

Manslaughter is the unlawful killing of a human being, with reckless disregard, and without premeditation and malice aforethought. Voluntary manslaughter can occur when there is a sudden provocation of passion in an ordinary, and the assailant does not have time to cool off and consider their actions. Involuntary manslaughter occurs when the suspect did not intend to kill, but did so negligently.

Ace, under the direction of S, and with the approval of their co-conspirator D, committed an illegal act, which resulted in the death of Joe. When Ace threw the syrup, and it hit a gas line, and the gas line exploded, it killed Joe. One of the issues here is foreseeability. S and D may argue that they could not have anticipated, or foreseen the gas line exploding. They would argue the explosion is not a natural and probable consequence of syrup being thrown. The misdemeanor rule would however come into play. S and D were arguably culpable for misdemeanor crimes, and could be charged with the involuntary manslaughter stemming from those crimes. The **felony murder rule** would not apply because burglary is not an inherently dangerous crime.

Altogether, S and D can be charged with solicitation, conspiracy, burglary, trespass, vandalism, and involuntary manslaughter.

Missed issues:

-5 ARSON

~~murder~~

3)

In order for a crime to occur, there has to be mens rea (the culpable mindset), the actus reus (the guilty voluntary act), the combination of the actus reus and the mens rea, and causation.

Alan

What crimes may Alan be charged with?

Missed issue: Larceny -3

Burglary

Under common law, burglary is the breaking into a residence at night with the intent to commit a felony therein. Modern trend's version of burglary is the entering into a structure or residence with the intent to commit a theft or a felony therein. Under the modern trend, burglary can be either first degree burglary, which consists of one who breaks into the dwelling (car or vehicle), while second degree burglary is a commercial or non-residential property. Under the modern trend, there need not be a breaking or entering, the burglary need not be committed at a residence, and the burglary need not be committed at night. Burglary is a specific intent crime.

Here, Alan committed burglary under modern trend. He did not break and enter into the jewelry store; he simply entered with a master key. Although the crime was at night, it did not meet the other criteria necessary for common law burglary. Alan also emerged shortly after carrying a bag of stolen jewelry. He intended to commit a theft or felony inside the jewelry store. Alan may argue that he didn't commit a burglary because he had a master key to enter into the store; the state will argue that breaking and entering is not required.

It is likely that Alan will be charged with second degree burglary.

Robbery

Robbery is the intent to steal property with the use of force or the threat of use of force to permanently deprive the owner of the property. The threat of force or use of force under modern trend can be applied while a defendant or perpetrator is trying to retain the property in their possession.

Here, Alan struck Carl, the security guard, with his fist and started to run once he was confronted for the robbery. He took the property and became in possession of the jewelry. Alan then intended to

use force in an attempt to retain possession of the stolen property once at risk of being caught by Carl.

Alan may argue that he didn't intend to inflict serious bodily injury upon Carl in his attempt to flee. The state will most likely argue that the burden is not about serious bodily harm — it is the intent to use some force or threat of force to retain possession of the property.

It is likely that Alan will be charged and convicted of robbery.

Solicitation

Solicitation is an inchoate crime whereby the defendant intends to gain a third party to engage in criminal activity. It is a specific intent crime.

Alan called Bruce and informed him that he was going to "hit" the jeweler that night, offering him 50 percent of the share.

Alan may argue that the use of the word "hit" did not mean to burglarize the store. The state will more than likely argue that there was no other meaning to be inferred based on the defendant's actions that night after using the word "hit."

It is likely Alan will be charged with solicitation.

Conspiracy

Conspiracy is the criminal specific intent act to work with others to obtain some overt criminal result. Under common law, conspiracy required two or more people to agree on the conspiracy for conspiracy to be found. Conspiracy required bilateral agreement under common law, whereby two or more people agreed. Under modern trend, most states only require unilateral agreement, i.e., only one party has to conspire with others. Mere preparation is enough under conspiracy. Under common law, the merger doctrine didn't allow for conspirators to be liable for both conspiracy and target crimes. The majority of modern trend has done away with the merger doctrine, allowing for defendants to be convicted of both conspiracy and target crimes. Under some modern jurisdictions, one who attempts to thwart the commission of a crime by informing police may not be held liable for conspiracy.

Co-conspirator liability is present when a co-conspirator's crimes were a reasonable or likely consequence of the crime.

Alan will likely be found guilty of conspiracy to commit burglary with Bruce. There was a substantial step in the commission of the burglary, i.e., Alan informed Bruce of the plan; he then drove to Bruce's apartment, and the two of them then drove to the store. Bruce and Alan were working together to burglarize the store. Alan may argue that there was no conspiracy since Bruce dropped out of the plan. The state will argue there was a substantial step taken in the furtherance of the

crime. *Missed issue: At common law and in modern majority of jurisdictions abandonment is not a defense to conspiracy. Modern minority rule requires attempt to thwart the crime.*

-3

It is likely Alan will be found guilty of conspiracy.

Assault

Assault is the intent to cause imminent apprehension of a serious bodily harm or offensive touching beyond mere words. Under modern trend, most jurisdictions require a frightened victim and the reasonability of the assault to manifest into a battery. Assault is a specific intent crime.

Here, it is likely that Alan caused Carl an imminent apprehension of serious bodily harm or offensive touching when he was approached for the alleged burglary. The imminent apprehension of being punched was present, and it is likely Carl was frightened of the altercation. Alan may argue that he was defending himself from Carl, who was an off-duty police officer and may not have been wearing police identification. Alan may argue he used force as a means to protect himself from a possible threat posed by Carl. The state will argue that Alan did not have cause to use self defense as he was the aggressor in the altercation, particularly when he turned away from Carl.

It is likely that Alan will be found guilty of assault on Carl.

Battery

missed issue: Defense of property. -1

A battery is direct or indirect offensive touching or infliction of serious bodily harm upon another. Under modern trend, battery can be aggravated if a deadly weapon is used or if the battery is committed against a peace officer or child. Touching of someone's connected property is sufficient for a battery. Battery is a general intent crime.

Bruce

What crimes may Bruce be charged with?

Conspiracy

Conspiracy is the criminal specific intent act to work with others to obtain some overt criminal result. Under common law, conspiracy required two or more people to agree on the conspiracy for conspiracy to be found. Conspiracy required bilateral agreement under common law, whereby two or more people agreed. Under modern trend, most states only require unilateral agreement, i.e., only one party has to conspire with others. Mere preparation is enough under conspiracy. Under common law, the merger doctrine didn't allow for conspirators to be liable for both conspiracy and target crimes. The majority of modern trend has done away with the merger doctrine, allowing for defendants to be convicted of both conspiracy and target crimes. Under some modern jurisdictions, one who attempts to thwart the commission of a crime by informing police may not be held liable for conspiracy.

Co-conspirator liability is present when a co-conspirator's crimes were a reasonable or likely consequence of the crime.

Bruce agreed to go to the jewelry store with Alan to commit the burglary. He then drove with Alan to the store but backed out as they neared it. Mere preparation is enough for conspiracy. Bruce engaged in preparation of the crime when he drove with Alan to the jewelry store.

Bruce will argue he did not commit the crime of conspiracy because he did not actually burglarize the store. The state will argue that he helped in the preparation of the crime and therefore is guilty of conspiracy.

It is likely Bruce will be found guilty of conspiracy.

Accomplice Liability

Complicity is accomplice liability. Accomplices aid, encourage or assist in the commission of a crime. Accomplices must have the mens rea to want the target crime to be completed by the principal, and they must want the target crime to be completed.

Under common law, there were four distinctions for complicity: principals in the first degree; principals in the second degree (such as a getaway driver); accessory before the fact (mastermind); and accessory after the fact. Modern trend eliminates the distinctions between principals in the first and second degree, as well as accessory before the fact, leaving only accessory after the fact.

In most states, an accomplice cannot escape liability once the target crime has been completed. In some states, an accomplice can escape liability once the target crime has been completed if the

missed issue: Attempted Burglary -3
(Partial credit given for accessory discussion)

accomplice exited the crime with the intent to not complete it, not the intent to delay the commission of the crime.

Bruce will likely be found liable for acting as an accomplice. He will argue that he did not go through with the target crime and he even contemplated calling police to inform them of Alan's crime. Bruce did exit the target crime and did not have the intent to complete it at a later time.

Bruce will be found not guilty of complicity.

Denny

What crimes may Denny be charged with?

Aggravated Battery

A battery is direct or indirect offensive touching or infliction of serious bodily harm upon another. Under modern trend, battery can be aggravated if a deadly weapon is used or if the battery is committed against a peace officer or child. Touching of someone's connected property is sufficient for a battery. Battery is a general intent crime.

Here, Denny, a body builder, hit Carl with a piece of metal found on the sidewalk, which could be construed to be a deadly weapon. Denny also struck Carl, who was a peace officer, though he was off duty. Denny may argue that the piece of metal was not sufficient to cause serious bodily harm, and that he did not know Carl was a peace officer. The state will more than likely argue that a metal stick which causes a broken arm is serious bodily harm and is sufficient for the element of aggravated battery.

Aggravated Assault

Assault is the intent to cause imminent apprehension of a serious bodily harm or offensive touching beyond mere words. Under modern trend, most jurisdictions require a frightened victim and the reasonability of the assault to manifest into a battery. Assault is a specific intent crime. Aggravated assault under modern trend constitutes the intent to cause imminent apprehension of a serious bodily harm or offensive touching beyond mere words with a deadly weapon or against a peace officer.

Here, there was an imminent apprehension of serious bodily harm to Carl when Denny picked up the piece of metal and approached Carl.

Attempted Murder

Under common law, murder is the killing of a human being by another human being with malice aforethought. Under the common law, there were no degrees of murder — there was just a distinction between murder and manslaughter. Under the modern trend, the majority of states divide murder into degrees. First degree murder is the killing of a human being by another human being with premeditation and deliberation. Second degree murder is the killing of another human being by another human being with malice aforethought lacking premeditation and deliberation. Second degree murder is also known as depraved heart murder, which constitutes a reckless disregard for human life.

While it would be a stretch to charge Denny with attempted murder, it is possible that because he intended to inflict serious bodily harm on Carl, Denny could be charged with attempted murder.

Defenses

For all possible charges, Denny could successfully argue defense of others.

Defense of others

Defense of others is justified at both common law and under modern trend. Under common law, there had to be a special relationship between the victim and the one coming to the victim's aid. Under modern trend, most states do not require a special relationship between the aider and the victim. Some states, the minority of which, require some sort of special relationship for defense of others to be valid.

Here, Denny heard the gunshot fired by Carl toward Alan, saw Alan running and Carl with the gun in his hand. It is likely to a reasonable bystander that Alan may have looked in peril, and Denny felt justified in his attempt to come to his aid. Despite not knowing the whole story of the altercation, Denny would be able to use the mistake excuse. **A mistake of fact** is a defense to a crime if it negates the culpable mens rea. Either the defendant has the guilty mental state or he doesn't.

Denny reasonably believed that Alan was being attacked or shot at by Carl. This mistake of fact was reasonable given the circumstances. It is ultimately likely that Denny will not be liable for any of the possible crimes due to mistake of fact, which was reasonable given the circumstances.

Ultimately, Denny will likely not be charged with any crime.

Better to state "not convicted."

Missed issues:

-4 Alan not justified in using ordinary force, but Carl not justified in using deadly force? Common law of being felon? modern majority "reasonable appearances" vs. minority rule "step into shoes"

END OF EXAM