

**KERN COUNTY COLLEGE OF LAW**  
**MIDTERM EXAMINATION**  
**FALL 2020**  
**CRIMINAL LAW**  
Professors D. Kinnison

**Instructions**

1. This examination consists of three sections of equal value. There is a four (4) hour time limit to complete the exam.
2. There are three essay questions. Make sure that you read each essay question carefully before answering. Attempt to organize your answer before you start writing. You may print the essays to make notes and mark key words as you review each essay before starting to write.
3. 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.
4. There are multiple issues to address in the essay questions. Some issues may be fairly straightforward and do not require detailed analysis. Other issues may be more complicated; those issues merit more extended discussion.

Criminal Law Exam Essay Question # 1  
80 Minutes

Jack and Larry found out that their best friend from childhood was murdered. They both became upset, suspecting that he was killed by Rick who had been in an argument with their friend the week before. Several days later, on the date of their friend's funeral, Jack and Larry consumed alcohol, became emotional, and angrily decided to find Rick. Jack wanted to kill Rick who he felt responsible for the death of the friend. He asked Larry to go with him to find Rick to "get even for their friend and kill him." Jack showed Larry the pistol he was going to take with him to shoot Rick. Larry agreed to go along with Jack to look for Rick.

Larry drove them in his car five miles away to a neighborhood street corner where they saw Rick. Larry parked the car, and Jack approached Rick 20 feet away and fired ten rounds directly at Rick while Larry waited in his car and watched. Jack ran back to the car and threw the gun into the storm drain as he did so. They fled away in Larry's car. Rick suffered serious injuries and died that same day.

Discuss Jack's and Larry's culpability for intentional forms of homicide, if any. What defenses, if any, might Jack and Larry raise?

Criminal Law Exam Essay Question #2  
80 Minutes

Sandy has been convicted of violent crimes and recently paroled out of prison. Shortly after getting out of prison, Sandy decided to rob a bank to finance a vacation to the South of France. Sandy obtained a semi-automatic handgun from one of her convicted felon friends to display during the robbery. However, she did not intend to use the gun or hurt anyone during the robbery. Sandy then staggered to her car and drove to the bank. After parking in the bank parking lot and putting on her mask, Sandy concealed the gun and walked toward the bank entrance. A security officer in the parking lot ordered Sandy to "stop and freeze." Sandy jumped back in her car and sped back towards home, but the security officer got her license plate number. The police observed Sandy's car and gave chase. Sandy fired her gun at the police so they would stop chasing her. The bullet hit a patrol car's windshield made of bullet proof glass harming no one. Sandy crashed her car and police apprehended her. Sandy was taken in on a parole violation, pending new criminal charges by the District Attorney's Office.

What crimes could the DA argue Sandy committed? What should Sandy's attorney argue in response? What should a jury decide?

Criminal Law Exam Essay Question #3  
80 Minutes

Dennis was a drug-addict and needed money to buy drugs. At around 2 am on Ocean Avenue, he opened mailboxes belonging to the residences. In one, he found a box of blank checks from Bank of America mailed to the account holder who lived in one of the residences. Dennis made a check out for \$1,000 and wrote his name in the payee line and signed the check using the name of the account holder. Dennis then went to a Bank of America branch to cash the check. Dennis provided the teller the check for \$1,000 that he had taken from the mailbox belonging to one of the residences on Ocean Avenue. The teller cashed the check and gave Dennis \$1,000.

Dennis continued walking down the street and found himself in a neighborhood known for drug and theft crimes. One of the neighborhood drug dealers, Slanger, saw the cash in Dennis's hands. Slanger approached Dennis, threatened to kill him and demanded that Dennis hand over the cash. Dennis, in fear for his life, handed Slanger the money. Slanger, carrying a bat, struck Dennis in the head after taking the money, causing Dennis to fall down. Slanger then ran away on foot.

Discuss the crimes that Dennis committed and any applicable defenses.  
Discuss the crime(s) that Slanger committed and any applicable defenses.

## QUESTION 1 ANSWER OUTLINE

### INSTRUCTOR USE ONLY – DO NOT PROVIDE TO STUDENTS, PLEASE

Answer and Issues outline:

1. First degree premeditated, deliberate, murder: Jack and Larry committed first degree premeditated murder. This crime requires proof of the following elements: 1) defendant committed an act that caused the death of another person; 2) when the defendant acted, he intended to kill the other person and did so with premeditation and deliberation; and 3) he killed without lawful justification. Jack and Larry had express malice because they unlawfully intended to kill. Under the deadly weapons doctrine, an inference of intent to kill is raised through the intentional use of a firearm which is calculated to lead to produce death or serious bodily injury. Malice aforethought does not require hatred or ill will toward the victim, Rick, but it is clear that they harbored ill will toward the person they believed had killed their best friend. The murder is first degree because they acted with premeditation and deliberation, planning to and did drive 5 miles to find their intended victim to shoot and kill him, with Jack obtaining the weapon with which to do it. When they saw Rick, Larry stopped his car to let Jack out who walked 20 feet to shoot Rick as intended. This evidence shows they weighed the considerations for and against their choice and knowing the consequences, decided to kill. They acted with premeditation because they decided to kill before driving to find Rick and shoot him. The amount of time required for deliberation and premeditation may vary from person to person and according to the circumstances. A decision to kill made rashly, impulsively, or without careful consideration of the choice and its consequences is not deliberate and premeditated. On the other hand, a cold, calculated decision to kill can be reached quickly. The test is the extent of the reflection, not the length of time
  - a. Larry might argue that he did not know Jack would actually shoot Rick but that he just thought Jack was going to scare Rick “to get even with him.” However, he was specifically asked by Jack to go with him to kill Rick, he was shown the pistol with which Jack was going to do so, and he watched Jack as he walked up to Rick and shot him ten times. Furthermore, after the shooting he fled from the scene and helped Jack escape in his vehicle.
2. Second degree murder and Common Law murder: If the prosecution fails to prove that the murder was first degree murder, it would be murder in the second degree in jurisdictions having first degree and second degree murder statutes. At common law there were no degrees of murder, but murder was defined as the unlawful killing of another

human being with malice aforethought--where the killing is done with one of the following mental states: 1) intent to kill; 2) intent to inflict great bodily injury; 3) with reckless indifference to an unjustifiable risk to human life (depraved heart); or under the felony murder rule. The evidence shows that both had the intent to kill here so they would both be guilty of common law murder.

3. Heat of passion: to reduce the murder to voluntary manslaughter, Jack and Larry may argue for a heat of passion defense which requires proof that 1) defendant was provoked; 2) as a result of the provocation, they acted rashly and under the influence of intense emotion that obscured their reasoning/judgment; and 3) the provocation would have caused a person of average disposition to act rashly and without due deliberation, that is from passion rather than from judgment. Heat of passion does not require anger, rage or any specific emotion, it can be any violent or intense emotion that causes a person to act without due deliberation and reflection. Larry and Jack must show that they acted under the direct and immediate influence of provocation – slight or remote provocation is not enough. It is not enough that they were simply provoked – they are not allowed to set up their own standard of conduct. Larry and Jack have to show that a person of average disposition, in the same situation and knowing the same facts, would have reacted from passion rather than from judgment. Additionally, if enough time passed between the provocation and the killing for a person of average disposition to cool off, and regain his reasoning/judgment, then the killing is not reduced to voluntary manslaughter.
4. Diminished capacity, voluntary intoxication: Jack and Larry may argue that they were intoxicated by alcohol. However, voluntary intoxication alone is not a defense to the crimes although it could be a defense to the mens rea required for conspiracy and first degree murder--the intent to agree and the intent to kill Rick. They would each have a level of intoxication such that it impaired his ability to form the intent required for each crime of conspiracy and first degree murder. If successful, the intoxication defense would only mitigate the crime of first degree murder to a lower degree, or perhaps voluntary manslaughter. The jury may get an instruction and consider evidence of their intoxication and whether they formed the specific intent for conspiracy and to kill Rick.
5. Conspiracy: since Larry and Jack are acting together to commit the murder, there is an argument that they are in a conspiracy to commit the murder. To prove that they're guilty of conspiracy to commit murder, it must be proved that 1) they intended to agree and did agree to commit the murder; and 2) at the time of the agreement, they intended that one of the would commit the crime; and 3) one of the defendants committed an overt act to accomplish the goal of murdering Rick. It must be proven that Larry and Jack intended to agree and did agree to commit the murder. An agreement may be inferred from Larry's

and Jack's conduct. An overt act is an act by one or more of the conspiracy members that is done to help accomplish the agreed upon crime. The overt act must happen after the defendant has agreed to commit the crime. The overt act must be more than the act of agreeing or planning to commit the crime, but it does not have to be a criminal act itself. Here, the overt act can be them driving to the street corner where Jack fired the rounds at Rick (or the actual act of shooting). Larry could argue he merely accompanied or associated with Jack, and did not intend to commit the murder, but again the facts discussed above show otherwise. In some jurisdictions, the conspiracy charge would merge into the completed crime of murder.

6. Aiding and abetting: even though Jack is the person pulling the trigger, Larry is also guilty of the murder as an aider and abetter. A person may directly commit a crime or aid and abet a perpetrator who directly commits the crime, i.e. murder. To prove that the defendant is guilty of a crime based on aiding and abetting that crime, it must be proven that: 1) the perpetrator (Jack) committed the crime; 2) defendant knew that perpetrator intended to commit the crime; 3) before or during the commission of the crime, the defendant intended to aid and abet the perpetrator in committing the crime; and 4) the defendant's words or conduct in fact aided and abetted the perpetrator's commission of the crime. Someone aids and abets a crime if he/she knows of the perpetrator's unlawful purpose and h/she specifically intends to and does in fact, facilitate, promote, encourage or instigate the perpetrator's commission of that crime. As stated before, the facts show Larry knew what Jack intended to do and was even shown the gun with which Jack was going to shoot Rick to kill him, drove him to find Rick and thereafter watched as he did so, escaping with Jack afterwards.
7. Accessory after the fact: If Larry is able to successfully argue he did not conspire to kill Rick and thought Larry was only going to scare Rick, the fact he drove the get away vehicle to help Larry escape makes him an accessory after the fact to the murder he witnessed.

## **QUESTION 2 ANSWER OUTLINE**

**INSTRUCTOR USE ONLY – DO NOT PROVIDE TO STUDENTS, PLEASE**

**Issue 1: Did Sandy commit the crimes of robbery, burglary, and attempted larceny?**

**Rules:** Robbery: D takes property from another's possession or immediate presence using force or fear and against the V's will.

Burglary: D enters a building with the with the intent to commit a felony or any theft.

Attempted Larceny: Direct step toward trespassory taking of another's property with the intent to deprive the owner of the property.

Attempt: 1) Beyond planning and preparation; 2) A direct but ineffective step which puts plan into action so that the plan would have been completed if some circumstance outside the plan had not interrupted the attempt. A direct step indicates a definite and unambiguous intent to commit the crime.

Analysis and conclusion: Sandy attempted to commit an armed robbery (and necessarily a larceny and burglary), by taking direct steps such as obtaining a gun, driving to the bank, etc. Sandy obviously intended to use force or fear, even if she didn't want to "use" the gun, as she intended to display it during the theft. *Although she did not enter the bank, it was her intent to enter it and do so with the intent to commit a felony and a theft.*

**Issue 2: Is Sandy liable for resulting crime of attempted murder?**

**Rules:**

1. Attempted murder requires the intent to kill (express malice). Must prove that the defendant took a direct but ineffective step toward killing another human being and the defendant intended to kill that person. If done with premeditation and deliberation, an attempted killing **exposes the perpetrator to lifetime imprisonment**. The length of time the person spends considering whether to kill does not alone determine whether the attempted killing is deliberate and premeditated. The amount of time required for deliberation and premeditation may vary from person to person and according to the circumstances. A decision to kill made rashly, impulsively, or without careful consideration of the choice and its consequences is not deliberate and premeditated. On the other hand, a cold, calculated decision to kill can be reached quickly. The test is the extent of the reflection, not the length of time.
2. Factual impossibility is not a defense: It is irrelevant that the windshield was made of bullet proof glass, as long as Sandy had the specific intent to kill.
3. The facts do not implicate attempted voluntary manslaughter (in Self-Defense or Heat of Passion) because the police had a lawful right to chase Sandy.

**Analysis and conclusion:** 1. Facts to analyze for whether Sandy committed an attempted murder by firing her gun at police: The police observed Sandy's car and gave chase. Sandy fired her gun at the police so they would stop chasing her.

**Issue 3: Is Sandy culpable for the crime of assault on the police officer?**



**Rule: Assault**—An act that would probably result in the application of physical force + D is aware of facts + facts would lead a reasonable person to realize that act was likely to result in the application of physical force by D.

**Analysis and conclusion:** Sandy clearly committed an assault on the police by firing her gun at them. She was aware of the fact that by firing a round, it was likely that there would be an application of physical force by her on the officers.

### QUESTION 3 ANSWER OUTLINE

#### INSTRUCTOR USE ONLY – DO NOT PROVIDE TO STUDENTS, PLEASE

Answer and Issues outline:

1. Taking blank checks from a mailbox. This is larceny, not burglary, because a mailbox is not a building, room within a building, or a locked vehicle (there are other structures listed in PC 459, but students just need to know the places listed on CALCRIM 1700, unless we gave them the statute on an exam). Students need not discuss other forms of theft that do not apply for this crime, because it is obvious they do not apply on these facts. **BUT WHAT ABOUT THEFT BY FALSE PRETENSES/TRICK/EMBEZZLEMENT AS DISCUSSED BELOW?**

2. Forging the check/theft by false pretenses: There is a California crime called forgery that we did not study, which best fits the bill here. However, theft by false pretenses also covers this crime, if we regard the owner of the money/intended V as the bank. Theft by false pretenses requires that the perpetrator: (1) take property (or money) by knowingly and intentionally deceiving the owner or agent by falsehood (called false pretense); (2) the perpetrator takes possession and ownership of the property; and (3) the victim consents to the transfer of possession and ownership relying on the falsehood. Dennis took the cash by intentionally deceiving the teller by falsely representing himself as the account holder for both the check and the loan. Dennis intended to acquire ownership of the money, so it is not a theft by trick. The theft was not trespassory, so it is not a larceny. Neither the bank nor the account holder entrusted Dennis with the check or the proceeds so it is not embezzlement. As to the proceeds, embezzlement does not include consent due to fraud, deceit, or falsehood. It is not a larceny by trick because the V bank intends to transfer ownership of the money and consented to transfer. **It is not a larceny with the bank as V because the taking will is not trespassory, i.e. bank intended and did in fact transfer the money.**

3. Entering the bank with a forged check. **IN MODERN LAW**, this is a burglary because Dennis entered a building with the intent to commit a form of theft. **At common law it would not be burglary because it was not a dwelling and not done at night.**

4. Slander crimes: Slander committed the crime of robbery. Robbery requires proof that: (1) the property was in Dennis's possession; (2) Slander took property not his own; (3) the property was taken from Dennis's immediate presence and against his will; and (4) that Slander used force or fear to take the property. Additionally, the evidence must prove that when Slander used force or fear, he intended to deprive Dennis of the property permanently. Here, Slander sees the cash that Dennis is carrying and arguably, forms the intent to steal the money from him. There is no evidence of Slander returning the cash to Dennis since Slander flees the scene and does not return.

6. Battery: Slander also committed battery against Dennis. Battery requires proof that Slander willfully touched Dennis in a harmful or offensive manner and that Slander did not act in self-defense. Slander hit Dennis **in the head with a bat** which was clearly willful and offensive and not done in self-defense. **At common law, the mental state required for battery was criminal negligence for either offensive touching or bodily injury battery, while the MPC mens rea is recklessness. These elements were all met due to the use of a bat to hit the victim in the head causing him to fall down.**

7. Assault: Requires proof that Slander committed an act that by its nature would directly and probably result in the application of force to a person (i.e. punching someone in the head); that he committed the act willfully (i.e. willingly or on purpose); and that Slander was aware of the fact that would lead a reasonable person to realize that his act would directly and probably result in the application of force to someone. The evidence must also prove that Slander had the present ability to apply force and did not act in self-defense. All these elements are met here. The key point is that under CALCRIM and most jurisdictions, there is no need to prove that Slander actually touched Dennis. The touching can be done indirectly by causing an object to touch the other person – the bat here.

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For criminal liability, four elements must be present in order to convict a criminal: (1) an actus reus, (2) a mens rea, (3) concurrence of both an actus reus with a mens rea, and (4) causation.

### Actus Reus

Actus reus is the wrongful voluntary act, or omission, when a duty is present that causes harm to another person. Actus reus is considered the guilty act of a crime.

### Mens Rea

Mens rea is the guilty state of mind that a criminal must have with his actus reus in order for him to be charged with a criminal crime. There are two types of mens rea: specific-intent and general-intent. Specific-intent crimes require not only the doing of an act, but the doing of it with a specific-intent or objective. General-intent crimes do not require any kind of intention or purpose in committing an unlawful act. Crimes resulting from negligence or recklessness are generally general-intent crimes.

### 1. Jack's Culpability

#### Homicide

Homicide is defined as the killing of a human being by another human being. It is the intentional act, or omission, that causes the death of a human being and when coupled with a culpable mens rea. When done with malice aforethought, homicide becomes murder. Murder may be express or implied. A person acts with malice if the unjustifiably, inexcusably, and absence of mitigating circumstances, kills a person with any of the following mental states: (a) the intention to kill a human being; (b) infliction of grievous bodily injury on another; (c) an extremely reckless disregard for the value of human life (depraved-heart); or (d) the intention to commit a felony during the commission, or attempted commission, of which a death accidentally occurs (felony-murder).

#### Express Malice Murder

An express malice murder is a murder that takes place when a defendant kills a victim with premeditation and deliberation. An act is done with premeditation and deliberation when the defendant takes the time to think about the act and kills the victim deliberately.

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Here, Jack committed an express malice murder when he shot Rick with his pistol. The facts show that, after he found out that his best friend from childhood was murdered, Jack communicated with Larry on wanting to kill Rick. Jack wanted to kill Rick because he thought that Rick was responsible for his best friend's murder. The facts show several ways that Jack possessed the intent to kill. First, he communicated with Larry that he wanted to murder Rick. He also showed Larry his pistol and hoped to use it to shoot Rick. He further solicited Larry to go with him so that he and Larry could look for Rick and could be successful in completing the crime. Jack also went up to Rick and fired ten rounds directly at him.

As such, Jack will be convicted of express malice murder.

### Implied Malice Murder

Implied malice murder occurs when there is a natural and probable consequence of an act dangerous to human life; e.g. it was foreseeable a person could die; and the defendant acted knowing the danger was apparent with conscious disregard for their life. An implied malice murder can be murder committed by extreme recklessness with a conscious disregard for human life or inflicting grievous bodily injury to the victim.

Here, the facts show that Jack approached Rick and fired ten rounds at him and demonstrated a conscious disregard for Rick's life. Rick suffered serious injuries and died later that day and the court will reason that Jack was intentional in wanting to kill Rick. This was also apparent because he did not just fire two or three shots, he shot Rick ten times. This constitutes a depraved heart murder. Also, because Rick later died at the hospital as opposed to directly after he was shot, Jack's actions may be considered as intentionally inflicting grievous bodily harm to Rick.

As such, Jack may be convicted of implied malice murder.

### Voluntary Manslaughter

An intentional, unjustified and inexcusable killing constitutes voluntary manslaughter if committed in sudden heat of passion, as the result of adequate provocation. The provocation must be sudden and intense passion must have been present to cause the defendant to lose self-control. The defendant must also have been provoked and not have had a sufficient "cooling" period.

Here, Jack was angry at Rick and wanted to murder him. Although it can be argued that Jack was in a heat of passion and was provoked by the death of his childhood best friend's death, his actions

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were not a result of a sudden heat of passion. There was also ample time for him to cool off because he went to the bar after his friend's funeral.

As such, Jack may not be convicted of voluntary manslaughter.

### First Degree Murder

California Penal Code Section 189 states that all murder that is perpetrated by means of a destructive device or explosive, a weapon of mass destruction, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or that is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or any other acts by this statute, or murder that is perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death will be charged as first degree murder.

Because CA has degrees of murder, Jack will be convicted of first degree murder. He premeditated in killing Rick and was deliberate by approaching Rick and shooting him ten times. He communicated with Larry at a bar and wanted to murder Rick because he suspected Rick of killing his best friend and wanted to "get even for their friend." Jack premeditated about the shooting and wanted Larry to go with him so that they could find him. He was deliberate in that he approached Rick and shot him ten times.

### 2. Larry's Culpability

#### Co-Conspirator Liability

One conspirator may, by virtue of his participation, meet the requirement for "aiding and abetting" the commission of crimes by his co-conspirator and therefore be liable for those crimes as an accomplice. Even if the conspirator did not have the mental state for accomplice liability, each conspirator may be liable for the crimes of all other conspirators if two requirements are met: (1) the crimes were committed in furtherance of the objectives of the conspiracy; and (2) the crimes were a natural and probable consequence of the conspiracy.

Here, because Larry was a co-conspirator to Jack, he will be liable for murdering Rick. Larry is a co-conspirator to the crime because he was aware that Jack wanted to murder Rick. Jack communicated to him that he was angry at Rick because he suspected him of killing their best friend from childhood. Larry also knew that Jack was serious in his plan because Jack showed Larry his

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pistol. Further, Larry drove Jack to Rick's location and waited until Jack had murdered Rick so that he can take Jack to a place of safety. Larry may argue that he did not commit the guilty act of murdering Rick and that he simply drove Jack to Rick's location. His defense will fail though as he was a co-conspirator to the murder and did not take sufficient steps to withdraw or perform affirmative acts; such as notify police or notify Rick that his life was in danger. He also waited in his car until Jack had finished completed the crime and drove Jack away from the scene of the crime.

### Intoxication

Intoxication may be caused by any substance; alcohol, drugs, or medicine, etc. and may be raised whenever it negates the existence of an element of a crime.

Here, the intoxication defense will not be available to Jack and Larry. Although intoxication is a defense to the specific-intent crime of first-degree premeditated murder, Jack and Larry voluntarily intoxicated themselves with alcohol before committing the murder. If the intoxication was involuntary the defense would hold, but because they voluntarily went to the bar and got intoxicated, the defense will not hold.

**END OF EXAM**

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**Issue: Did Sandy commit the crimes of burglary, robbery, attempted larceny, attempted murder and felony possession of a firearm.**

Attempt: In order for a defendant to be liable for attempt, the defendant must have: (1) had specific intent to commit the crime not just general intent to do the act that would be illegal (2) made an overt act that constituted a substantial step in furtherance of the commission of the crime. Mere preparation cannot ground liability for attempt.

Murder: Murder is the unlawful killing of another human being or fetus with malice aforethought, express or implied.

Burglary: Burglary under California Law: To prove the defendant is guilty of burglary, the prosecution must prove that (1) the defendant entered a building, room within a . a building, locked vehicle or structure and (2) when the defendant entered the building, room within a . building, locked vehicle or structure, the defendant intended to commit a theft or felony therein.

Robbery: Robbery is the unlawful taking and carrying away of the property of another by means of violence or threat of force with the intent to permanently deprive the owner of the use of his or her property.

Attempted Larceny: Direct step toward trespassory taking of another person property with the intent to deprive the owner of the property.

Possession of a firearm: Defendant receive a firearm and defendant knew he or she received a firearm and defendant was previously convicted of a felony before.

**Attempted Burglary**

Issue: Whether or not Sandy can be found for attempted burglary?

Rule: Burglary under California Law: To prove the defendant is guilty of burglary, the prosecution must prove that (1) the defendant entered a building, room within a building, locked vehicle or structure and (2) when the defendant entered the building, room within a . building, locked vehicle or structure, the defendant intended to commit a theft or felony therein.

Analysis: Sandy intended to rob a bank, which is a recognized felony to satisfy the elements of burglary which was defined above. Furthermore, Sandy completed the overt act in furtherance of committing this crime can be shown in the fact pattern that she purposely drove to the bank, after she parked at the bank parking lot she put on her mask and concealed the gun and walked toward the bank entrance.

Conclusion: Sandy will most likely be found guilty of attempted burglary.

### **Attempted Robbery**

Issue: Whether or not if Sandy can be found guilty of attempted robbery?

Rule: Robbery is the unlawful taking and carrying away of the property of another by means of violence or threat of force with the intent to permanently deprive the owner of the use of his or her property

Analysis: Sandy took direct steps of obtaining a gun to rob a bank to finance a vacation to the South of France. Further, Sandy intended to take money from the bank she took direct steps by obtaining the gun but she did not intend to use the gun to hurt anyone during the robbery. However, she obviously intended to use force and fear even though she did not want to use the gun. The act that falls short of completion can be due to either failure or incomplete of the crime. Failed attempt is defined as the defendant does everything possible that was planned however, it does not go as they planned. An incomplete attempt is where the defendant is forced to stop the act before it is completed. This can happen in many ways, they stop and decide not to go forward with the crime or if police finds out of the crime. When Sandy was ordered to "stop and freeze by police security officer is considered an overt act. Another overt act can be when the police officer observed Sandy and chased her and by also apprehending Sandy.

Conclusion: Sandy will most likely be found guilty of attempted robbery.

### **Attempted Larceny**

Issue: Whether or not if Sandy is guilty of attempted larceny?

Rule: Direct step toward trespassory taking of another person property with the intent to deprive the owner of the property.

Analysis: Sandy took the direct step toward of obtaining a semi-automatic handgun from one of her convicted felon friends to display during the robbery.

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Conclusion: Sandy will be most likely found guilty of attempted larceny.

### **Felony possession of a firearm**

Issue: Whether or not if Sandy will be guilty of possession of a firearm?

Rule: Possession of a firearm: Defendant receive a firearm and defendant knew he or she received a firearm and defendant was previously convicted of a felony before.

Analysis: Here, Sandy has been convicted of violent crimes and recently has been out on parole. Sandy obtained a semi-automatic handgun from one of her convicted felon friends which she decided to use to scare during the robbery. Sandy is a prior felon and she should not be in possession of a firearm.

Conclusion: Sandy will be found guilty of possession of a firearm.

### **Attempted Murder**

Issue: Whether or not if Sandy will be liable for attempted murder?

Rule: Murder is the unlawful killing of a human being or fetus with malice aforethought, express or implied. First degree murder is defined as (1) statutory means murder (2) willful, deliberate and premeditated; or (3) first degree murder. Willful is a specific intent to kill, deliberate is carefully weighing the considerations for and against the act and knowing the consequences of the act, still deciding the kill. Premeditation is when defendant decided to kill before committing the act that cause the death. First degree felony murder rule is defined as a killing that while in the commission of or attempt to commit an enumerated felony burglary, arson, rape, robbery or kidnap. Attempted murder requires the intent to kill which is the express malice which is specific intent to kill. The prosecution must prove that the defendant took a direct but ineffective step toward the killing of another human being and the defendant intended to kill that person. The deadly weapon rule states that use of a deadly weapon during the commission of a crime satisfies the express malice requirement for murder.

Analysis: Here, Sandy did fire her gun at the police so the police would stop chasing her this satisfies the malice under the deadly weapons rule. Second degree murder is all other murders to prove the defendant is guilty of second degree murder the prosecution must prove murder in of two ways (1) express malice murder (2) implied malice murder and (3) second degree statutory means murder the implied malice. Second degree murder is when the defendant's conduct shows an

extreme and conscious disregard for a human life with criminal negligence. When Sandy fired her gun at the police and crashed her car that shows that Sandy is acting in extreme and disregard for a human life. Furthermore, while the police chased her she disregarded other people's life during the chase. The police chased Sandy when they observed her car, the prosecution can argue that Sandy intended to kill the officers to stop the chase. However, since Sandy did not kill someone or a death did not occur she can not be guilty of murder. Further, she did not want to kill anyone she just had the gun to scare people at the bank her intentions were never to kill anyone. Sandy only fired the gun so the police would stop chasing her .

Conclusion: Sandy will not be guilty of attempted murder.

### **Assault**

Issue: Whether or not if Sandy is guilty of assault?

Rule: A defendant is guilty of assault where he or she has intentionally created a reasonable apprehension of imminent bodily harm by physical force.

Analysis: Here, Sandy committed an assault on the police when she fired her gun at them voluntarily. Sandy was aware of the fact that by firing the gun, was most likely there might be some application of force by the police officer. When Sandy fired the gun and it hits the windshield there is an imminent threat of harm .

Conclusion: Sandy will be convicted of assault.

### **(B) DEFENSES WHAT CAN SANDY'S ATTORNEY ARGUE**

#### **Factual Impossibility:**

Issue: Whether or not Sandy attorney can raise factual impossibility?

Rule: Factual impossibility is when some unanticipated factor can and would make the crime impossible to complete.

Analysis: Here, Sandy attorney can argue that when Sandy shot at the police it only hit a patrol car's windshield. Police car is a barrier and there is not possibility of harm which also satisfies one of the elements of assault.

Conclusion: Factual impossibility is never a defense.

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**Withdrawal**

Issue: Whether or not if Sandy attorney can argue withdrawal?

Rule: Withdrawal from a crime requires the defendant to voluntarily abandon the crime before completion and take significant steps to prevent its completion.

Analysis: Sandy attorney will argue that when Sandy jumped back in her car and sped back towards her home that is when she decided not to go forward with the crime. However, the prosecution will argue that she did not take significant steps to prevent it from happening she still went all the way through with the crime until the security officer told her to stop and freeze. Sandy attorney can argue that she never actually began the attempted burglary or robbery and she did not enter the building as well. However, this argument will fail because she did not voluntarily withdraw from the attempted robbery and burglary.

Conclusion: Sandy will be convicted for attempted burglary and robbery and her argument for withdrawal will not be satisfied.

**END OF EXAM**

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For criminal liability, four elements must be present in order to convict a criminal: (1) an actus reus, (2) a mens rea, (3) concurrence of both an actus reus with a mens rea, and (4) causation.

### Actus Reus

Actus reus is the wrongful voluntary act, or omission, when a duty is present that causes harm to another person. Actus reus is considered the guilty act of a crime.

### Mens Rea

Mens rea is the guilty state of mind that a criminal must have with his actus reus in order for him to be charged with a criminal crime. There are two types of mens rea: specific-intent and general-intent. Specific-intent crimes require not only the doing of an act, but the doing of it with a specific-intent or objective. General-intent crimes do not require any kind of intention or purpose in committing an unlawful act. Crimes resulting from negligence or recklessness are generally general-intent crimes.

### 1. People v. Dennis

#### Larceny

Larceny is defined as the trespassory taking and carrying away of the personal property of another with the intent to permanently deprive another person of their property. Larceny is a specific-intent crime.

The facts show that Dennis opened mailboxes belonging to residences on Ocean Avenue. When he found a box of blank checks in one of the mailboxes, he took them and made a check out for himself. He committed a trespass to the property of another and had the intent to permanently deprive the rightful account holder of their property. As he had taken the check at 2am, it can be inferred that he did not have permission to do so because the account holder was most likely sleeping and unaware that Dennis was committing the crime. As such, Dennis may be convicted of larceny.

#### Forgery

A defendant is guilty of forgery when they make or alter false writing with the specific intent to defraud another person.

Here, Dennis made a check out for \$1,000 and wrote his name in the payee line and signed the check using the name of the account holder. He made a false writing with the specific intent to defraud the Bank of America teller. As such, Dennis may be convicted of forgery.

### False Pretenses

The crime of false pretenses occurs when the defendant obtains title to the property of another by a knowing (in some states, intentional) false statement of past or existing fact with intent to defraud the other. The defendant must have known that their statement was false when they made it and must also have intended the victim rely on the misrepresentation.

Here, Dennis made a check out for \$1,000 and signed the check using the name of the account holder. Then, he approached the Bank of America teller and cashed the check. Dennis knew that he was not the rightful account holder and had the intent to defraud the teller so that he can receive \$1,000. By using the stolen check, signing it on behalf of the account holder, he intended the teller, the victim, to rely on the misrepresentation. As such, Dennis may be convicted of false pretenses.

### Burglary

Under the common law, burglary is defined as the unlawful breaking and entering of the dwelling of another at nighttime with intent to commit a felony therein. The actual breaking can be minimal force. Under a modern interpretation, burglary can occur at daytime, inside of a structure (as opposed to a person's dwelling) and it is sufficient that the defendant entered the structure even if no actual breaking occurred. Burglary is a specific-intent crime.

Here, Dennis will be guilty of burglary under a modern interpretation; specifically, second degree burglary. When Dennis entered a Bank of America, he entered a commercial establishment in order to commit a felony therein. He also formed the requisite intent to commit burglary before entering the bank because he committed larceny and was planning on using stolen checks to cash out money that did not belong to him. As such, Dennis may be convicted of second-degree burglary.

### Insanity and Intoxication

Under the common law, the insanity defense generally has a two-pronged test. The first test is whether the person knew what they were doing was right or wrong. The second test is whether the

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defendant appreciated the consequences of their actions. Courts have also added a third prong known as the irresistible impulse test, which states that a person is legally insane if their action was due to an irresistible impulse. A minority of jurisdictions use the Durham Test, which states that a person is legally insane if their actions were the produce of their mental illness. Another minority test adopted is the M.P.C., or ALI Test, which allows for a defendant to be legally insane if they cannot appreciate the right or wrongness of their actions.

Intoxication may be caused by any substance; alcohol, drugs, or medicine, etc. and may be raised whenever it negates the existence of an element of a crime.

Here, the facts show that Dennis was a drug-addict. Although the facts do show whether Dennis was on drugs at the time he committed larceny and the ensuing crimes, a defense may be argued that he had no control over himself because he was a drug addict and the drugs made him insane and commit the crimes in order to fulfill his need of drug use. It can further be argued that because Dennis was a drug-addict, his continuous and excessive drug use caused him to not be fully aware and understand the wrongness of his actions.

## 2. People v. Slanger

### Robbery

Robbery is defined as larceny by force, violence, intimidation, or threat in the victim's presence and defendant must have apprehended imminent harm. Robbery is a specific-intent crime. An armed robbery is a crime that involves a robbery with a weapon. So long as a person believes that there is a weapon, even when there is none, the defendant will still have committed the crime.

Here, the facts show that Slanger used violence and threatened Dennis to giving up his money. Dennis apprehended imminent harm from Slanger's actions, and the fact that Slanger had a bat, he also had an apprehension of imminent harm. Further, Slanger used a bat which constitutes an armed robbery. Slanger may argue that Dennis stole money that did not belong to him in the first place so it is factually impossible to be charged with the crime. However, this defense will fail because he still took money, or property, from Dennis using force and threats. Factual impossibility is never a defense and here, Slanger still had intent to commit robbery to Dennis. As such, Slanger may be convicted for robbery.

### Assault

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Assault is defined as an attempt to commit a battery; or the intentional creation-other than by mere words-of a reasonable apprehension in the mind of the victim of imminent bodily harm. An aggravated assault arises when a defendant uses a dangerous weapon with intent to rape, maim, or murder.

Here, the facts show that Slanger approached Dennis and threatened to kill him if he did not hand over his money. Slanger caused reasonable apprehension of imminent bodily harm to Dennis and Dennis perceived the harm resulting in him handing over his money. After Slanger hit Dennis with a bat, it is likely assumed that Dennis perceived more imminent harm from Slanger after being hit. As such, Slanger may be convicted of aggravated assault.

### Battery

Battery is the unlawful application of force to a victim resulting in either bodily injury or an offensive touching. Battery is a general-intent crime. An aggravated battery occurs when a defendant uses a deadly weapon and serious bodily injury is caused.

Here, Slanger used a bat and struck Dennis. He used a weapon and caused bodily injury causing Dennis to fall down. As such, Slanger may be convicted of aggravated battery.

### Attempted Murder

A criminal attempt is an act that, although done with the intention of committing a crime, falls short of completing the crime. It consists of a specific intent to commit the crime and an overt act in furtherance of that intent. The defendant must have committed an act beyond mere preparation for the offense. Several tests have been used to determine whether the act requirement for attempt liability has been satisfied. Under the traditional rule for attempt, courts evaluated the act based on how close the defendant come to completing the offense. Under this proximity test, attempt requires an act that is dangerously close to success. Under the majority rule, or M.P.C. test, a substantial step in a course of conduct planned to culminate the commission of the crime is needed. An act will only qualify as a substantial step if it is strong corroboration of actor's criminal purpose.

Murder is the unlawful killing of another human being with malice aforethought. Malice aforethought may be express or implied. A person acts with malice if they unjustifiably, inexcusably, and absence of mitigating circumstances, kill a person with any of the following mental states: (1) the intention to kill a human being; (2) the intent to inflict grievous bodily injury on another; (3) having a depraved

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heart or being extremely reckless towards the value of a human life; or (4) the intention to commit a felony and during the commission or attempted commission a death accidentally occurs (felony-murder).

Here, the facts show that Slanger hit Dennis with a bat after demanding money from him. The prosecution may argue that he had malice and acted with a depraved heart and caused grievous bodily injury to Dennis as he was intending to steal money from Dennis. Slanger will argue though that he was not attempting to murder Dennis; he simply was trying to get away so that he could be successful in taking Dennis's money. Although Slanger's actions of hitting Dennis with a bat on the head may not constitute grievous bodily injury, the court may find that Slanger's actions did show that he had a depraved heart by striking Dennis in the head with a bat. Slanger could have walked away after threatening Dennis with a bat, but he took an additional step and struck Dennis in the head. Striking a person in the head with a bat may constitute a depraved heart. As such, Slanger may be convicted of attempted murder.

**END OF EXAM**