

KERN COUNTY COLLEGE OF LAW  
MIDTERM EXAMINATION  
FALL 2019

**CRIMINAL LAW**

Professor D. Kinnison

Instructions

1. This examination consists of three sections of equal value. There is a three (3) 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.
3. The essay questions test your ability to apply the law to the facts. Use IRAC. 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 are more complicated; those issues merit more extended discussion.
5. Bluebook Users/Essays -- Please write your ID number (not your name) on the cover of each of your bluebooks. Write your professor's name. Number your bluebooks. Return every page of this examination along with your bluebooks. Write on only one side of each bluebook page. Your answer must be double-spaced. Make sure your answer is legible. You will get no credit for words or sentences that we cannot read.
6. Computer Users/Essays -- Please type your ID number (not your name) at the beginning and end of your essay. Also type the name of your professor at the beginning. Return every page of this examination along with your answer.
7. This exam has four (4) pages including this instruction sheet.

QUESTION 1

Beatrice, in need of money, suggests to Conrad that they rob the corner pawnbroker's shop. Conrad agrees, but, knowing of Beatrice's temper, says, "No violence. No weapons. We simply go in, take a few things, and leave." Beatrice acquiesces.

Inside the store, George is attempting to persuade Rod, the owner, to give him "a few dollars" for an outmoded record player. "I can't take it," replies Rod: "I'd never be able to resell it." George takes a revolver from his coat. "I just want its market value. Please." Rod remains adamant. "I can't do it." George puts down the gun and says, "My child has kidney failure. He needs a transplant. I need the money." Rod goes into the register and gives George market value for the player, which George attempts to put on the counter. Unhappily, George is so nervous that he drops the player, and it hits Rod, who was bending down, on the head, knocking him unconscious. George runs out of the door, as Beatrice and Conrad come in.

Beatrice and Conrad notice that the owner is on the floor. Before they can take any items, Rod awakens and struggles to stand up. Conrad screams, "It's you! I've been waiting 20 years for this." Conrad takes a nearby golf club and hits Rod. "Stop!" yells Beatrice. "You agreed no violence." "This guy killed my daughter 20 years ago. Now he'll pay for it," says Conrad. Beatrice, with no materials from the store, runs out of the shop. Conrad pushes Rod back to the floor and hits him 30 more times, killing him. Conrad then removes the record player and several watches from the store and leaves.

Later investigations reveal the following facts. (1) George has no child. He and his wife, Martha, have long fantasized about a child, and to them, at least on some occasions, he is very real. George honestly believed his child was in kidney failure. (2) Twenty years earlier, Rod had been (non negligently) driving a car when Conrad's daughter ran directly into its path. An investigation found that Rod had not committed any crime or tort. Conrad had always thought Rod criminally responsible, but had moved away soon thereafter and did not know that Rod was running the pawnshop.

Discuss the criminal liability of George, Conrad, and Beatrice under the common law and the modern statutory trends.

Question 3

Clyde was the shipping manager at a plant owned by the Acme Distillery Company. Clyde heard that Bob was in the business of purchasing stolen whiskey and asked Bob if he would be interested in purchasing a truckload. Bob said that he would. Clyde then told Bob to be at Bob's garage around 4:00 p.m. the next day.

The next day, Clyde approached Tank, a truck driver, and offered her \$1,000 to drive the truck. Clyde said that he would arrange to have the truck loaded and would alter the shipping records so that the load wouldn't be missed. Clyde also told Tank that he would tell her which truck would be used and where to deliver the whiskey just before Tank left the loading area. Tank replied, "What an unbelievable idea!" Sam, the plant manager, overheard that conversation and contacted the police. The police advised Sam to allow Tank to drive the truck out of the plant and they would follow it to the delivery point. Clyde altered the shipping records so that a truck would be filled with cases of Acme whiskey. Shortly before the truck was completely loaded, however, Tank started to walk toward a telephone to call the police. When Sam and a police officer confronted Tank, she acknowledged that she had "lost her nerve." They instructed her to go through with the plot and not say anything. Tank did this. While Tank and Bob were unloading the truck at Bob's garage, the police arrested Clyde, Tank, and Bob.

Discuss the potential criminal culpability of Clyde, Tank, and Bob.

2)

**Issue: What is Able's culpability?**

Here, the prosecution would likely not charge Able, since the crimes were committed in the course of his occupation as a law enforcement officer.

Able would likely not be found liable for the crimes that took place during the event.

**Issue: What is Baker's culpability?**

**Rule:**

**Conspiracy** - Conspiracy is an inchoate crime. Under common law, conspiracy consists of two or persons entering into an agreement to commit an illegal act or goal; an agreement in the furtherance of that goal. Under the modern law, an overt act is required in furtherance of that goal.

**Accomplice** - A person who aids, abets, encourages, including acting as a get away driver is liable as an accomplice.

**Attempt:** Attempt is an inchoate crime. Attempt requires an overt act in the commission of a felony. The act of attempt can merge with the crime that is committed.

**Robbery:** Robbery is an inherently dangerous felony. Robbery is the intent, to forcefully take or threaten to take by force, the personal tangible property of another, or property within their close proximatey, with the intent to permanently deprive.

**Assault:** Is the unlawful attempted battery on a person or causing the fear of immediate bodily harm to a victim.

**Battery:** Battery is the voluntary act; of making an immediate, harmful or offensive direct or indirect contact; with the victim; causing bodily harm.

**Homicide:** Is the killing of another human being.

**Common law murder:** Is the intentional killing of another with malice aforethought.

**1st degree murder** - The intentional killing of another with malice aforethought. Also, includes killings that are pre-meditated, terrorism, poison, or disfigurement.

**Felony murder** - Under modern statutes, felony murder is the killing of another during the commission of an inherently dangerous crime, i.e. burglary, arson, robbery, rape, or kidnapping.

Here, the prosecution would likely argue that Baker had conspired with Charley and Able to commit a felony robbery. The conspiracy was completed when all three parties drove to the store they were going to rob. Although, Baker did not exit the vehicle, he would still be equally liable for the crimes committed by Charley in the furtherance of the felony. The attempt crime would merge with the robbery. The prosecution will also likely argue that Baker is guilty of felony murder and the actual cause of Easey's death since, but-for Charley and Baker attempting to rob the store and shooting Easey, she would not have ended up with the gunshot wounds and contracted the virus that killed her. Baker would also be held accountable for the battery against Dogge.

Defense may argue that Charley should not be held liable due to entrapment. That Able attempted to persuade Baker to commit an act that he would not normally have committed. Additionally, it may be argued that a conspiracy would not be possible since Able was an undercover officer. However, under modern statutes, conspiracy does not require two parties when one of the parties is an undercover officer. Furthermore, defense may argue that a robbery was not actually committed since neither Baker, nor Charley left with any money. However, this would not be a solid defense since the money was moved by Able during the robbery. It is insignificant that Able turned out to be a police officer, since neither Baker nor Charley were aware of that during the commission of the robbery.

Baker would likely be found liable for the conspiracy, robbery, assault, battery and felony murder.

**Issue: What is Charley's culpability?**

**Rule:**

**Conspiracy** - Conspiracy is an inchoate crime. Under common law, conspiracy consists of two or persons entering into and agreement to commit an illegal act or goal; an agreement in the furtherance of that goal. Under the modern law, an overt act is required in furtherance of that goal.

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**Felony murder** - Under modern statutes, felony murder is the killing of another during the commission of an inherently dangerous crime, i.e. burglary, arson, robbery, rape, or kidnapping.

Here, the prosecution would likely argue that Charley had conspired with Baker and Able to commit a felony robbery. The conspiracy was completed when all three parties drove to the store they were going to rob. Additionally, Charley committed an assault when he pulled out his gun and shot Dogge putting Dogge in immediate apprehension of a battery and fear of losing her life. Charley also committed battery, when he made indirect contact with Dogge by way of the gun, and the bullet that hit Dogge and Easey. The attempt crime would likely merge with the robbery. The prosecution will also likely argue that Charley guilty of felony murder and the actual cause of Easey's death since, but-for Charley attempting to rob the store and shooting Easey, she would not have ended up with the gunshot wounds, contracted the virus that killed her. Prosecution may also argue that Charley is also liable for the battery of Easey from the bullet that struck him from Dogge's gun, since it occurred during the commission of the robbery and could be considered a foreseeable consequence of the situation.

Defense may argue that Charley should not be held liable due to entrapment and Able attempted to persuade Charley to commit an act that he would not normally have committed. Additionally, that

conspiracy would not be possible since Able was an undercover officer. However, under modern statutes, conspiracy does not require two parties.

Charley would likely be found liable for the conspiracy, robbery, assault, battery and felony murder of Easey.

**Issue: What is Dogge's culpability?**

Dogge would likely not be held liable for anything in this matter, since she acted in self-defense. Although, Able gave Dogge a note explaining that he was an undercover police officer, a reasonable person would likely not believe it and would have acted in the same manner that Dogge did in the current situation.

**Issue: What is Easey's culpability?**

Easey could not be held liable for anything in this matter since he was merely an innocent bystander.

**END OF EXAM**

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**People v. Conrad**

**Conspiracy**

Conspiracy is an agreement between two or more people with the intent to agree and the intent to commit a crime, or act through unlawful means. Under common law, conspiracy was bilateral requiring that both parties agree. The modern trend is a unilateral approach in which only one of the parties must genuinely agree. Further, the modern trend has been to require that an overt act in furtherance of the conspiracy take place.

Here, the prosecution will argue that Conrad entered into an agreement with Beatrice to commit robbery. Beatrice and Conrad both agree to the robbery, and the intent to agree can be inferred from their actual agreement. Furthermore, they took several overt acts in furtherance of the conspiracy, including going to a pawnbroker's shop with the intent to rob the store.

The defense will likely argue that it was Beatrice's idea and that Conrad did not genuinely agree to rob the store.

However, given the modern trend a court will likely find that Conrad did enter into a conspiracy with Beatrice.

**Attempt**

Attempt is defined as having the intent to commit a crime while taking a substantial step in furtherance of that crime. Attempt only applies to specific intent crimes, and is a complete lesser included offense, unless the attempt is successful in which case it merges with the target crime.

Here, the prosecution will argue that Conrad had the intent to rob Rod's pawnshop and he took a substantial step by entering the store with said intent.

The defense will likely argue that Conrad did not come armed with any type of weapon, and that he explicitly agreed with Beatrice, during their discussion of the plans, that violence was not going to be used. The defense will likely contend that this demonstrates that Conrad did not have the necessary intent to rob Rod because there was likely no intent to use the threat of force. However, the court will



likely conclude that a threat or force does not require the use of a separate instrumentality, and the force of physical violence by the feet or hands would likely be enough to constitute a robbery. Further, although the robbery may never have reached completion, Conrad's substantial step, i.e., entering Rod's pawnshop. Thus, he will likely be liable for attempted robbery

### **Homicide**

Homicide is defined as the unlawful killing of another, with malice aforethought. Malice aforethought can either be implied or express. Express malice is when someone acts with the intent to kill. Implied malice arises when an actor acts with intent to cause great bodily harm, acts with extreme disregard for the value or human life, or when the homicide occurs during the commission of an inherently dangerous felony such as burglary, arson, robbery, rape, or kidnapping. Further, the killing must be separate and distinct from the initial crime, and a foreseeable outcome.

Here, the prosecution will likely argue that Conrad is culpable for felony murder because the killing occurred during the attempted commission of a robbery. Even though Conrad explicitly agreed with Beatrice not to use deadly force, the prosecution will likely argue that death is a natural and foreseeable consequence of robbery.

The defense will likely contend that in this case the death was not foreseeable because Conrad did not know that Rod was the owner of the pawnshop. Thus, Conrad's reaction to seeing Rod, who had killed his daughter, was an act that would be outside of the foreseeability of the robbery. Nevertheless, the court will likely conclude that Rod's killing was a natural and foreseeable result of Conrad's attempted robbery, and thus barring any successful defenses (discussed *infra*) Conrad he will be culpable of felony murder.

### **Larceny**

Larceny is the trespassory taking and carrying away of another's property with the intent to permanently deprive them said property.

Here, the prosecution will likely argue that Conrad committed larceny when he took Rod's property upon leaving the premises. Given that Rod was killed by Conrad, it would be factually impossible for Conrad to return the property too Rod.

Here, the defense may attempt to argue that the property could not factually belong to Rod since Rod was no longer living. However, given that Conrad was the one who created Rod's death, it is likely that the court will find Conrad culpable of Larceny.

### **Imperfect-Defense**

Conrad's attorneys will likely attempt to mitigate the felony murder charge down to manslaughter with a imperfect-self defense. This is an excuse defense that allows the defendant to be charged with the lesser offense of manslaughter. Reducing murder to manslaughter requires that the defendant acted in the a heat of passion that a reasonable person would experience under the circumstances, i.e., there was adequate provaction--generally mere words are not enough. Further, the person must not have had time to cool, and must not have actually cooled off.

While Conrad may argue that seeing Rod caused him to be adequately provoked, that will likely not be sufficient. This is due to the fact that Conrad's anger stems from an accident, that killed Conrad's daughter, which happened twenty years ago. Given the time between when Conrad's daughter was killed and when Conrad killed Rod, it is likely that enough time has passed to eliminate this defense.

### **People v. Beatrice**

#### **Solicitation**

Solicitation is the encouragement of a person to commit a crime with the intent that the crime actually be committed.

Here, the prosecution will argue that Beatrice bringing up robbing a store is solicitation because she both encouraged Conrad to help her, and she had the intent to commit the crime. Her intent to commit the crime is evidence by the fact that both her and Conrad took steps towards actually robbing Rod's pawnshop.

The defense may argue that Beatrice was not serious, however, there are no facts that indicate that Beatrice was joking when she broached the subject of robbing a store.

#### **Conspiracy**

Conspiracy is an agreement between two or more people with the intent to agree and the intent to commit a crime, or act through unlawful means. Under common law, conspiracy was bilateral requiring that both parties agree. The modern trend is a unilateral approach in which only one of the parties must genuinely agree. Further, the modern trend has been to require that an overt act in furtherance of the conspiracy take place.

Here, the prosecution will likely use Beatrice's solicitation along with Conrad's agreement to establish that Beatrice entered in an agreement with Conrad and that their driving to and entering Rod's store was an overt act.

The defense will likely argue that Beatrice did not fully agree to the conspiracy because she demanded that there be no violence. However, given that most jurisdictions require that only one person genuinely agree, the court will likely find that Conrad fully agreed to the robbery, and thus the elements of conspiracy are met.

### **Conspiracy Liability**

A co-conspirator is liable for all crimes committed in furtherance of the conspiracy and any crimes which are a natural and probable result of the conspiracy.

Here, the prosecution will argue that Beatrice's liability extends to all crimes committed, including the felony murder.

### **Defense**

#### **Withdrawal**

A person can cut off liability for conspiracy if they repudiate the conspiracy and take every possible action to thwart the conspiracy.

Here, although Beatrice left Rod's store when Conrad hit him with the club, she did not withdraw by trying to thwart the crime, or contact the police and thus will be liable for all the crimes committed by Conrad.

### **People v. George**

#### **Robbery**

Robbery is the taking of a person's property by threat of force. Robbery is the taking of a person's property by threat of force with the intent to permanently deprive them. Robbery is a specific intent crime.

Here, the prosecution will argue that George committed robbery when he pulled out a gun and threatened Rod with a gun until he gave in and sold him the record player for its actual value.

The defense may argue that this could not be a robbery given that there was to be an exchange of items, i.e., a record player for money. However, the threat of force and Rod's initial insistence that he could not pay full value will likely negate that argument and barring a defense (discussed infra) will likely be held liable

### **Battery**

Battery is the unlawful application of force or offensive contact. Battery is a general intent crime.

Here, the state will argue that George dropping the record player on Rod's head, although negligent or reckless, constitutes a battery.

The defense may try to argue that it was not intentional, but given that battery is a general intent crime negligent or reckless behavior will satisfy the mens rea requirement

### **Defense**

#### **Insanity**

Under common law the insanity defense generally has a two pronged test, the first is whether the person knew what they were doing was right or wrong. The second is whether the defendant appreciated the consequences of their actions. Courts have since added a third prong known as the irresistible impulse test, which states that person is legally insane if their action was due to irresistible impulse. A minority of jurisdictions use the Durham test, which states that a person is legally insane if their actions were the product of their mental illness, i.e., their mental illness was the but-for cause. Another minority test adopted is the MPC, or ALI test which allows for a defendant to be legally insane if they cannot appreciate the right or wrongness of their actions.

Here, although George does display signs of mental illness (he doesn't actually have a kid with a failing kidney, like he said to Rod) there is no evidence that he did not know that his actions were wrong, that he could not appreciate his conduct, or that he was driven by irresistible impulse. The facts particularly establish that George and his wife only occasionally believe they have a daughter. Thus, this defense will likely not succeed.

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**END OF EXAM**

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### **Crimes of Clyde C**

#### Solicitation

Solicitation occurs when one requests encourages another to partake in criminal activity. Because the fact here show that C asked B if he would be interested in purchasing a truckload of whiskey that he knowingly was not in lawful possession of, he was soliciting B to commit a crime. C should be found guilty of solicitation.

#### Conspiracy

Conspiracy occurs when two or more people plan to commit a crime. C approached B and asked B if he would be interested in purchasing a truckload of whisky because he head that B was in the business of purchasing stolen whiskey. The prosecution could argue that C conspired with B to the sale of stolen goods. The facts show that C had the requisite intent to deprive Acme Distillery of their whiskey and sell it B. The defense could argue that C merely asked B if he wanted to purchase the whiskey, not telling him that the whiskey was stolen. If he did not mention to B that the whiskey was stolen then it wouldn't meet the requirement of conspiracy because in order to stratify that element two people need to be aware. If B did know that he was buying stolen whiskey, then C would be guilty of conspiracy.

#### Embezzlement

Embezzlement is the taking of goods while in lawful possession of the goods. C could be found guilty of embezzlement because he is the shipping manager of the plant and lawfully had access His plan was to deprive Acme Distillery Company of their goods and sell them to B. C could argue that he only set T up to pick up the shipment and that he was not in physical possession of the whiskey and therefore did not embezzle the whiskey. C could be found guilty of embezzlement.

### **Crimes of Tank T**

#### Conspiracy

Conspiracy occurs when two or more people plan to commit a crime. C approached T and offered her \$1,000 to drive a truck and made T aware that he would be altering shipping records. T knew of the plan and agreed, T could be found guilty of conspiracy. The facts state that while the truck was almost completely loaded that she had lost her nerve and was walking toward a telephone to call the police. Although this could be seen as T withdrawing from the crime, the truck was almost completely loaded and nearly finished. After being stopped by S and a police officer, she admitted she lost her nerve and they had instructed her to continue on with the crime. The defense would argue that T not be found guilty of conspiracy because she withdrew and was going to contact police. The prosecution would argue that it was too late to withdrawal and that the crime was nearly completed. Withdrawal would be her only defense had she gone to the police before the crime was in progress.

Therefore T will be found guilty of conspiracy.

### **Crimes of Bob B**

#### Conspiracy

Conspiracy occurs when two or more people plan to commit a crime. C approached B and asked B if he would be interested in purchasing a truckload because he heard that B was in the business of purchasing stolen whiskey. The defense could argue that B did not know that the whiskey was stolen and that because he paid for the truckload, he lawfully believed that he did not do anything wrong. The prosecution could argue that because this transaction is not a normal transaction that would have occurred for truckload of whiskey that B was actually aware that he was purchasing stolen goods. It would be difficult to prove that B knew that the truckload of whiskey was in fact stolen and the facts do not state that C made B aware that he would be committing a crime.

Therefore B should not be guilty of conspiracy.

#### Receipt of stolen goods

Receiving and knowingly accepting goods that had been stolen. The prosecution will argue that when T and B were unloading the truck into B's garage that would be him receiving the stolen goods. If B did not know that the goods were stolen, and that he actually paid for them it would be hard to prove that B is guilty of the receipt of stolen property. If B did in fact know that C had embezzled the goods from Acme Distillery Company, then he would be found guilty of the receipt of stolen property.

If B did not know that the whiskey he purchased from C was stolen then he should not be found guilty of receipt of stolen property.

**END OF EXAM**