

STUDENT ID: _____

MONTEREY COLLEGE OF LAW
MIDTERM EXAMINATION
FALL 2017

CRIMINAL LAW

Professor B. Brannon

Instructions

1. This examination consists of three sections of equal value. There is a three (3) hour time limit to complete the exam.
2. First there are two 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 are fairly straightforward and do not require detailed analysis. Other issues are more complicated; those issues merit more extended discussion.
5. The final section consists of 30 multiple choice questions. Circle the letter corresponding to the correct answer. Please write your ID number (not your name) and your professor's name on page 1. **-NOT AVAILABLE**
6. 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 I cannot read.
7. 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.
8. This exam has twenty (19) pages including this instruction sheet.

Monterey College of Law
Criminal Law Mid-term Exam 2017
Prof. B. Brannon

Question 1

Bernardo headed the Sharks criminal street gang, bitter rivals to the Jets gang led by Riff. The two gangs often engaged in violent acts against one another over drug dealing territory in the upper west side. Bernardo found out that his sister Maria was dating Tony, who was a member of the Jets gang. Bernardo was angry because both gangs forbid any type of friendly relations with members of the other gang, including family members. Bernardo called the Sharks together, explained the situation, and announced the Jets were responsible for "cleaning their own house." Bernardo and the Sharks decided to confront the Jets and to bring knives to show they meant business. After the meeting, Bernardo contacted Riff and the two agreed to a temporary truce for a meeting in a parking lot "to discuss business."

At the subsequent meeting, Bernardo and the Sharks pulled their knives, Bernardo told Riff and the Jets that Tony was dating Maria, and Bernardo threatened violence then and there if the Jets did not stop Tony. Before any of the Jets reacted, suddenly Chino, a Shark, charged towards Tony and stabbed him. Chino did not intend to kill Tony and Tony survived. Riff, who also did not intend to kill, then stabbed Chino who survived. Police, who had been tipped off about the meeting, simultaneously arrived and arrested Bernardo, Chino, and Riff.

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

Do not discuss aiding and abetting.

Question 2

Dave discovered his wife Marilyn had posted an advertisement inviting men to come to their house and have sex with Marilyn while Dave was at work. Dave bought a gun and one day after drinking heavily at a local bar, drove by his house in the afternoon. He saw an unfamiliar car parked in his driveway. Dave loaded the gun and entered his house and walked down the hallway to his bedroom. He found his wife in bed with another man. Pointing his gun at the man, Dave told him he was about to die. Several moments passed as the man begged for his life and gathered his clothing. From his trousers pocket, the man suddenly pulled a gun and fired at Dave, but missed. Dave then shot and killed the man. Dave's wife called the police who arrested Dave. Dave told the police he initially only wanted to scare the man into leaving and ended up having to kill him only to save Dave's own life.

What type(s) of homicide(s) should the DA argue Dave committed? What should Dave's attorney argue in response? What should a jury decide?

Do not discuss unintentional killings.

QUESTION 1 ANSWER OUTLINE¹

Credit ranges from ½ to +++; ½ = half of a +

No credit = ∅

Overview: The question tests basic conspiracy law. Because the facts explicitly exclude intent to kill, and because there are no such crimes as attempted implied malice murder, attempted conscious disregard voluntary manslaughter or attempted involuntary manslaughter (there is no such thing as the specific intent to commit an unintentional crime), homicide law is not implicated in the question.

+++Issue 1: Did Bernardo conspire with members of the Sharks to commit an assault on members of the Jets?

Rules:

+++Conspiracy definition and mens rea: Agreement between two or more persons to commit a *crime or crimes*. Requires specific intent to commit target offense. A conviction for conspiracy carries the same punishment as the completed target crime.

++Conspiracy actus reus: Agreement + at least one subsequent **overt act** (committed in California) by one co-conspirator required. An overt act may be less than a direct step (the actus reus for an attempt) but is more than agreeing and planning.

++Assault: A willful act that would probably result in the application of force. A reasonable person would so realize, and D had the present ability to apply force.

+++**Analysis and conclusion:** Bernardo likely conspired with the Sharks to commit an assault on the Sharks. There was clearly an agreement (which occurred at the meeting) and overt act (both Bernardo arranging the meeting with Riff and the Sharks showing up at the parking lot). But what was the target crime? The plan was to bring knives to show the Sharks meant business, which clearly implies the Sharks meant to display the knives to threaten the Jets with violence if they did not stop the Tony-Maria relationship. The fact that the Sharks and Jets are bitter rival gangs who often engage in violent acts against one another over drug dealing territory makes pretty clear the Sharks agreed to the target crime of assault. From the facts, it appears the first thing the Sharks did was pull their knives, which is circumstantial evidence that is what they intended all along according to their plan to show they "meant business." It is reasonable to infer that what initially occurred after the agreement went according to the plan. An assault occurred because when one gang pulls knives on another gang, that is a willful act that would probably result in the application of force. A probability is less than a preponderance, and in fact force was

¹ The outline is designed to assist professors in grading exams and as a key for students to identify issues and the applicable law. This outline is not a model answer because it may not include model analysis (a complete and thorough application of the law to the facts by both prosecution and defense) and may not offer a conclusion. However, the rule statements are exhaustive and beyond model. Little or no credit will be awarded for rule statements not tethered to their relevant issue. Due to time constraints it may not be possible to obtain all credit available. Better answers address major issues thoroughly where more points are available. Points will be deducted if an answer addresses minor issues without spotting central issues, or for failure to use IRAC.

+++Issue 4: Is Bernardo vicariously culpable for Riff's battery on Chino?

Rules:

+Conspiracy: A conspirator is only culpable for crimes committed by a co-conspirator.

Battery: See definition above.

++Self-defense and defense of others: D may use deadly force in response to deadly/GBI force when (all 4 are required):

1. D had reasonable belief there was an imminent danger of GBI/death,
 - a) Belief in future harm is not sufficient, no matter how great or likely the harm.
 - b) D must act only because of D's belief in GBI/death/rape/robbery.
2. The use of deadly force was necessary;
3. Proportionality: D used no more force than was reasonably necessary to defend against the (believed) danger;
 - a) D may stand ground and need not retreat even if defendant could have.
 - b) The right to use force exists as long as the danger exists or reasonably appears to exist.
4. D was not an aggressor.

Analysis and conclusion:

+++Vicarious culpability for conspiracy: Bernardo's counsel should argue that Riff cannot act in furtherance of Bernardo's conspiracy with the Jets; therefore Bernardo cannot be vicariously culpable for any crime Riff commits. However, could Bernardo be culpable for a conspiracy with Riff since the two agreed to meet? Conspiracy requires the specific intent to commit a target crime. They did not meet with the intent to commit any crime we studied. Bernardo and Riff agreed "to discuss business," not to fight. The prosecution may argue that Bernardo and Riff actually agreed to a gang fight in the parking lot, because the gangs were bitter rivals for drug dealing territory and they often engaged in violent acts against one another. According to this argument, they "discuss business" by fighting. If there was a conspiracy between Bernardo and Riff, and if it was foreseeable that Riff, the leader of Bernardo's rival gang, would commit a crime in furtherance of the conspiracy, Bernardo could be vicariously culpable for any crime Riff committed. Riff clearly committed a battery if his act was unlawful (not committed in self-defense or defense of others).

+++Defense of others: Even if the prosecution persuaded above, Bernardo has a strong argument that Riff acted in self-defense or defense of others when he stabbed Chino, who may have continued his attack redirected toward other Jets. Bernardo's defense counsel would argue that Riff believed he was showing up to a truce, so although he was armed he was not an aggressor, and if attacked he had the right to self-defense or defense of others. If Riff's act is justified and he committed no crime, there is nothing for Bernardo to be vicariously culpable for. The prosecution could argue that Riff was actually an aggressor since he agreed to fight (see CALCRIM 3471) or that Riff's stabbing of Chino was not necessary, but instead was committed in revenge. Riff must act only because of his belief in the need to defend against GBI/deadly force. Perhaps the prosecution could also argue that the arrival of the police made Riff's stabbing of Chino unnecessary since the jig was up, although the facts do not make that timing clear.

QUESTION 2 ANSWER OUTLINE¹

Credit ranges from ½ to +++; ½ = half of a +

No credit = Ø

Overview: The call of the question directs students to not discuss unintentional killings. Therefore, CDHL mens rea and involuntary manslaughter are excluded. All the relevant forms of homicide and defenses are discussed below.

++Issue 1: Did Dave commit first degree premeditated murder?

+++Rule: Requires the intent to kill.

Premeditation and deliberation: Before completing the acts that cause death, D carefully weighed the considerations for and against the killing and decided to kill.

+++Analysis and conclusion: Dave did not commit a burglary since he entered his own home and no other enumerated felony applies on the facts, so felony murder does not apply. The prosecution would argue Dave deliberated because he bought the gun planning to use it and loaded it before he went into the house. Dave had no need to load the gun if he did not intend to use it. Dave then threatened to kill the man and meant it. Dave would argue that if he deliberated about killing the man he would have killed him immediately. Instead, he allowed the man to gather his clothing which had no purpose unless he intended to allow the man to leave. He did not fire until he was fired upon, so the killing was not premeditated and deliberate.

++Issue 2: Did Dave commit express malice second degree murder?

+Rule: Intent to kill (**express malice**) *without* deliberation or premeditation;

+++Analysis and conclusion: The prosecution would argue that Dave likely intended to do what he did and what he threatened to do. He shot the man and killed him. Normally, when a person shoots at a living being they intend to kill the target. However, the jury is free to believe Dave, who claimed he did not intend to kill. Dave did not kill the man at the outset, but instead several moments passed as he allowed the man to dress. When the man fired, Dave reacted without the intent to kill. If the defense is correct, within the call of the question Dave is not guilty of any crime. (Although Dave would definitely be guilty of implied malice second degree murder if not mitigated and if a defense did not apply, the call of the question excludes discussion of unintentional killings).

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will argue HOP occurred at the time he actually witnessed the provocation. The prosecution will argue that Dave was not suddenly confronted with anything he did not expect, and that he reflected, judged, planned and acted in response to the ad, provoked by his wife, not the victim.

++ Issue 4: Did Dave commit imperfect self-defense voluntary manslaughter?

+++ **Rules: Imperfect self-defense (actual but unreasonable belief in the need for self-defense):**

- a) D actually believed self or another was in **imminent** danger of death or GBI; and
- b) D actually believed **immediate** use of deadly force was necessary; and
- c) At least one of above beliefs was unreasonable and mistaken. (If D's belief is not mistaken or is reasonable, then D has acted in perfect self-defense).

--Belief in future harm insufficient.

--In evaluating D's beliefs, consider all circumstances as known and appeared to D.

d) A mistake of fact defense predicated on a negligent/unreasonable perception of **facts**. The facts as D actually believed them must, if D's belief had been reasonable, constitute lawful self-defense. This means **the force D used must be proportional to the believed danger, D cannot be an aggressor, and the victim must not have had a lawful right to use force that constituted the believed danger.**

Imperfect self-defense does not allow D to argue an unreasonable mistake of law. Look at the set of facts as D actually believed them. If those facts could constitute self-defense had they existed, D has the right to imperfect self-defense even though D's belief in them was unreasonable. **If the facts D actually believes cannot constitute perfect self-defense, then they cannot constitute imperfect self-defense.**

++ **Analysis and conclusion:** Because Dave pointed a loaded gun at the man and threatened to kill him, Dave was the aggressor. Dave does not have the right to either perfect or imperfect self-defense, because the man had the right to self-defense on these facts. The man responded with deadly force while under the threat of deadly force. Dave did not negligently misperceive any facts and the man acted lawfully. Imperfect self-defense is not available in response to a lawful use of force.

++ Issue 5: Did Dave act in self-defense?

+++ **Rule:**

Self-defense: D may use deadly force in response to deadly/GBI force when (all 4 are required):

1. D had reasonable belief there was an imminent danger of GBI/death,
 - a) Belief in future harm is not sufficient, no matter how great or likely the harm.
 - b) D must act only because of D's belief in GBI/death/rape/robbery.
2. The use of deadly force was necessary;
3. Proportionality: D used no more force than was reasonably necessary to defend against the (believed) danger;
 - a) D may stand ground and need not retreat even if defendant could have.

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Prof. Brannon

CALL OF 9 LIMITED TO 0.

Could the Sharks gang, including Bernardo and Chino, be convicted of conspiracy?

A conspiracy is a nebulous meeting of the minds. The elements are as follows: (1) the defendant intended to agree and did agree to commit a crime or a lawful act in an unlawful way; (2) at the time of the agreement, the defendant intended that this crime be committed; (3) the defendant or another member of the conspiracy took an overt act in furtherance of the conspiracy; ([4] at least one of the acts in furtherance of this conspiracy was committed in California). Acts that show a conspiracy can be express or implied. Additionally, a conspiracy does not merge into the additional offenses committed via the conspiracy as it is an independent crime. In terms of the mens rea, conspiracy is a specific intent crime. Here, Bernardo called the Sharks together, explained the situation of his sister dating a rival gang member, and announced that the Jets were responsible for "cleaning their own house." Together, the Sharks, under the leadership of Bernardo decided to confront the Jets and bring their own knives. This is the agreement to commit a crime. The overt act is demonstrated when Bernardo contacts a member of the Jets. At this moment, Bernardo masked the conspiracy's intent of confrontation by lying, stating that he was interested in a truce to "discuss business." This act implies that Bernardo and the Sharks intended to follow through with their plan, and commit a crime that was leveraged on deceit to surprise and confront the Jets. Furthermore, the Sharks entered into this agreement and conspiracy as a violent way to declare and impose the territory limitations. This is a specific intent. This means that The Sharks intended the harmful results that would ensue from the completion of the conspiracy; its driving force was unambiguous and intentional. Considering all of the above, it would most appear quite probable that the court would convict the Sharks and Bernardo with conspiracy. As it is not clear exactly what the target crime was, the resulting crimes are discussed below.

Would Chino and Riff's actions be charged as an aggravated battery?

As neither Chino and Riff had the intent to kill, their actions must be discussed as an infliction of bodily injury. The elements of an aggravated battery are as follows: (1) willfully touch the victim in a harmful or offensive manner; and (2) intended to cause great bodily injury. Here, Chino stabbed Tony, and then, Riff stabbed Chino. Neither person died. Both acts were willful and harmful. Likewise, it can be assumed from using a knife to stab someone that one intends to cause bodily injury. There is no question here that both Chino and Riff would be convicted of aggravated battery. As for Chino, this conviction could implicate the other members of the conspiracy as discussed below.

Could the stabbing by Chino introduce liability on the other members of the conspiracy, including Bernardo?

In order to determine the liability of co-conspirators's actions, one must analyze the following elements: (1) the defendant conspired to commit a target crime; (2) the defendant or another committed a non-target crime during the commission of the target offense; (3) this non-target offense was a natural and probable result of the target crime that a reasonable person would deem foreseeable. As the target offense was implied and described only as, "confronting" the Jets, "discussing business," or "meaning business," the stabbing that occurred is covered under co-conspirator liability and as a result, the stabbing would implicate each member of the conspiracy with the burden of the offense. Here, Chino stabbed Tony, and Riff stabbed Chino.

As, Riff was not a member of the Sharks conspiracy, this theory of culpability only applies to Chino. Chino can be assumed to have been at the meeting, agreed to the meeting's conspiracy, and was present at the subsequent meeting as a response to this agreement, or not. In light of the former, as the Sharks decided at the time of the conspiracy agreement to bring knives, a stabbing could appear to be the target offense or a non-target offense. Either way, when each member pulled their knives out, a stabbing would appear to be a

natural and probable result of whatever crime they intended to commit. A reasonable person would most likely agree as there is a direct nexus to the tool each member bore, the resulting crime, and the specific intent of the conspiracy. Furthermore, as Chino stabbed Tony, the very Jet member that was dating Bernardo's sister, it would be very difficult to argue that this stabbing was not natural and probable result of the target crime if this was not the target crime. Under co-conspirator liability, each member would be tried as if they themselves had stabbed Tony.

However, as mentioned before, there is no direct evidence that shows that Chino was even present at the conspiracy's meeting, the defense could be argue that he did not act on behalf of the conspiracy and had his own vendetta against Tony and the Jets as they were a common enemy of the Sharks. Here, Chino could defend himself by saying that he never agreed with the other members as to the plans, he never intended the crime be committed before the subsequent meeting, or his motives differed from the rest of the members. His lack of involvement in the conspiracy could save him the additional offense, and keep the members of the conspiracy free of the charge of aggravated battery.

Could Chino claim self-defense for the stabbings?

The elements of self-defense are as follows: (1) the defendant believed that harm was imminent; (2) the defendant believed that the immediate use of force was necessary to defend against this imminent harm; (3) defendant did not use any more force than was necessary; (4) the defendant was not the aggressor. Here, a member of the Sharks, Chino suddenly stabbed a Tony, a Jet. Tony survived. Chino did not have the intent to kill. Regardless of whether Chino was a part of the conspiracy, or not, he stabbed Tony from the position of an aggressor. This automatically eliminates his chance at claiming self-defense. He is the aggressor because he came to a "meeting" of knives with the Sharks who were arguable unprepared for this as they came in a temporary truce, and stabbed

Tony before any Jet had a chance to react. Combat had not even begun before Chino stabbed Riff. The defense here could argue that Chino saw a knife, and he had an honest belief that he was under attack as they had engaged in many violent fights in the past. However, there would be many witnesses to say otherwise.

Could Riff claim defense of others when he stabbed Chino?

Similar to self-defense, the defense of others is as follows: (1) D believed that harm to someone close-by was imminent, (2) D believed that the immediate use of force was necessary to defend against this person, (3) D did not use more force than necessary. Here, Riff stabbed Chino after Chino stabbed Tony, a member of his gang. Riff saw the imminence of the harm as he watched the stabbing. As it was unclear whether Chino would stab again, a reasonable person would believe that it was necessary to use immediate force to defend against this person as they are an aggressor who made the first move in a confrontational situation. The force Riff used was identical to the force used against Tony. In front of the jury, Riff should be able to escape conviction as he used the defense of others as a complete defense to his stabbing. Considering the facts as they appeared to Riff, their gang had just been duped by their rival gang, and Riff had no idea what more they had planned. Riff and the Jets came to the meeting arguably in good faith to discuss business when his friend was stabbed. Riff reacted in defense and protection of himself and others.

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Professor B. Brannon

HOMICIDE

Homicide is the killing of a human being or fetus and is based on three malice theories for intentional killings, expressed, implied, felony murder. In order to determine which, if any theory of malice under homicide does apply to the facts we must examine the actus reus and mens rea of the defendant.

ACTUS REUS - NO ISSUE, O JUDGE TRIES

Killing, was there a killing? There was a killing of the man sleeping with Daves wife and the facts are clear that Dave was the cause in fact of that death. There were no intervening independent causes that break the causal chain of Dave's shooting and killing of the man in question.

MENS REA

The mens rea requisite for first degree express malice murder require there to be a premeditated and deliberate killing of a human being. The premeditation is considered to be the planning to kill while deliberation is the careful weighing for and against the killing and then deciding to kill. You may have an implied malice murder which requires only that the defendant engaged in a reckless act whose natural and probable consequence created such a high risk of great bodily injury or death that acting would show a clear conscious disregard for human life. In order to determine which malice theory Dave is

Express
implied
malice

guilty of in the killing of the man in question we must focus on examining Dave's mens rea below.

FIRST DEGREE MURDER

First degree murder is the intentional killing of another with premeditation and deliberation. Dave says that he only intended to scare his victim, which is unusual given the circumstances.

Premeditation:

Premeditation is the planning of the killing where an individual carefully studies the time place and manner of their subsequent murder. Dave became aware of his wife's infidelity and immediately bought a gun and then spent the day drinking heavily instead of going to work. At some point between the realization of his doomed marriage and the killing of the unnamed paramour, Dave put together a plan.

Deliberation:

Deliberation is the carefully weighing for and against the act of killing another. Here the facts do not lend themselves much to deliberation because they inject this notion of an intent to scare followed by a moment of hesitation. Had there been a subsequent firing beyond that moment of hesitation where one could reasonably infer Dave began to deliberate on whether or not to pull the trigger, it would be easy to arrive at the conclusion that Dave, in that moment weighed the consequences and chose to act. However, the unnamed paramour interceded by attacking Dave thus muddying the waters in a finding of deliberation. The DA would argue here that Dave came home after premeditating this murder at the bar and intended to kill the unnamed paramour regardless. Dave's attorney will argue that Dave's admission that he merely meant to scare the unnamed paramour into leaving was his exact intention and that Dave did not feel

comfortable to do so without a loaded gun and a belly full of alcohol. Further, Dave's attorney will argue voluntary intoxication as a defense to first degree murder. See Below.

Voluntary Intoxication:

Dave spent the afternoon drinking heavily. Voluntary Intoxication is a defense to the first degree murder mens rea requirements if the level of intoxication that is self induced rises to a level that would negate intent. Dave may have been drinking heavily and his attorney will clearly try to argue that Dave could not have possessed the required intent to commit this first degree murder. However, after drinking Dave then got in his car and drove by his house without incident or accident, he was able to notice the vehicle in the driveway dirtying his curtilage and his once clear vision of a happy home and reflect on that thought before moving into the home with a loaded weapon. It is unlikely that Dave will be successful in raising this defense because the subsequent conduct shows his level of intoxication was not enough to completely cloud his judgement.

Conclusion:

Dave (D) will most likely not be found guilty of first degree murder because he did not have the required mens rea at the time he killed the unnamed paramour. It is clear from the facts that during D's moment of deliberation he was interrupted by an attempt on his own life by the unnamed (UP). Taken with his own testimony that he merely meant to scare the UP, it is unlikely that the prosecution will be able to exert a finding beyond a reasonable doubt that D acted with both premeditation and deliberation in the killing of UP.

SECOND DEGREE MURDER

Express Malice:

Second degree murder is the intentional killing of another without premeditation and

deliberation. D claims that he did not intend to kill UP who he had discovered was sleeping with his wife after a day of drinking and after purchasing a gun because according to D he merely meant to scare the individual. As above, see supra, the moments in which D hesitates and UP gathers up his clothes tend to show that it is possible in fact that D did not intend to kill UP. The prosecution has a far better argument here because of the sudden buying of a firearm and the drinking and decision to return home in order to catch his wife in the act. D's attorney of course will defer back to D's testimony. They will also raise the voluntary intoxication defense see supra.

WHY?
EXPLAIN

Implied Malice: - EXCLUDED BY ALL OF Q, NO UNINTENTIONAL KILLINGS
Second degree murder implied malice with a depraved heart/conscious disregard for human life is where one's reckless act is so dangerous that it's natural and probable consequence is great bodily injury or death and that in so choosing to complete such an act you act with a conscious disregard for human life. The question here is whether or not D acted with a conscious disregard for human life. I think it is safe to say that when he found out his wife was cheating on him with another man or more than one man, purchased a firearm, spent the day drinking and then attempted to catch her in the act, that he acted recklessly. He could not have known that the man in the room (UP) was not armed. The prosecution here should argue strongly for an implied malice second degree murder charge because D appears to have set a trap of his own device by allowing his wife's adultery to continue without peaceful confrontation and intervention by a simple telephone call to let her know the jig is up! Instead he armed himself and engaged in consumption of alcohol before entering a potentially dangerous situation where all bets are off. D's attorney will argue that D couldn't have possibly known UP was armed and that no reasonable person could foresee UP being armed and willing to attack D. They will say that the armed victim was an independent intervening cause of his own death (somehow). The prosecution should counter that if Dave is going to assert self defense

(see below) that he should reasonably believe the same of all potential victims such as UP.

Self Defense:

D is entitled to self defense if he was in imminent harm of great bodily injury or death and the use of immediate deadly force was necessary to prevent that gbi or death to himself or another. D would only be entitled to this defense if he uses proportional force to stop the threat and if he is not the aggressor in this situation. The prosecution will argue that UP could not have known that D would show up with a gun, aim it at him and not say a word for several moments. UP begged for his life and made an attempt to rescue himself by firing at D. If anyone is the aggressor here, it is D and for that reason he is not entitled to self defense.

Conclusion:

As discussed above, I believe the best bet for the prosecution is to argue that D acted with a conscious disregard for human life when he acted upon his anger and let that anger fester, purchased a firearm and attempted to confront his wife's paramour who could have been armed. The totality of the circumstances lend themselves to a finding that D's course of action was reckless to a point that the natural and probable consequence was someone dying that day.

VOLUNTARY MANSLAUGHTER

Voluntary manslaughter is the intentional killing of another without malice aforethought. There are two forms of voluntary manslaughter, imperfect self defense and heat of passion.

Imperfect Self Defense:

An imperfect self defense killing is one where D kills another because of his belief that he was threatened with imminent great bodily injury or death and that he would be required to use deadly force to prevent that harm from coming to himself or another and that at least one of those beliefs was unreasonable. All in all if D would have had a perfect self defense but for his unreasonable belief he would be entitled to a finding for voluntary manslaughter imperfect self defense. Here as discussed above dave's belief that he was entitled to self defense was unreasonable and thus his belief in either of the above elements would have been unreasonable. For that reason D is not entitled to a finding of vol mans imperfect self defense.

EXPLAIN

CONCLUSION: CONFUSING

WHY?
WHAT
FACTS?
ISD NOT A
MISTAKE
OF LAW

Heat of Passion:

If D kills another after a sudden provocation without any cooling off period and a reasonable person under these circumstances would have acted in the same way he would be entitled to a finding of vol mans heat of passion. As discussed above, the prosecution should argue that D found this information on his own outside of his home and then spent time drinking heavily and cooling off after purchasing a firearm. Instead of letting well enough alone, he returned to his home with a plan to either scare or murder the individual inside and that is not exactly clear which he had premeditated from the facts. When someone acts under the heat of passion their judgement is clouded to a certain degree by the rage they feel, they white out and just act rashly. Here, D spent some time buying a gun, drinking and then returned to his home hoping to catch his wife in a situation he reasonably believed he would find her in. He cannot claim the surprise and sudden passionate rage requisite for this finding of voluntary manslaughter and for that reason his attorneys will be unsuccessful arguing for it.

CONCLUSION:



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As discussed above, D may not be found to have deliberated the murder of UP and for that reason the jury will have a difficult time finding him guilty of first degree murder. For the same reason above it will be hard to find him guilty of second degree express malice murder. I believe the jury will find D guilty of second degree implied malice under a depraved heart theory acting with a conscious disregard for human life in the killing of UP.

END OF EXAM