

San Luis Obispo College of Law

Criminal Law & Procedure

Fall 2021

Prof. C. White

Instructions:

Answer two (2) Essay Questions

Answer 23 MBE Questions

Total Time Allotted: Three (3) Hours

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Question 1

Bonnie and Clyde have a daughter named Daisy who is 11 years old. One day, Daisy comes running into the house crying and tells Bonnie and Clyde that she had been playing at the neighborhood park when a tall man wearing a red hat had grabbed her arm and tried to pull her into his van. Bonnie and Clyde call the police and Detective Smith responds to Bonnie and Clyde's house. Detective Smith interviews Daisy and then tells Bonnie and Clyde that there had been several complaints about a man matching this description trying to grab neighborhood kids. Detective Smith then says to Bonnie and Clyde, "We are understaffed and have no leads, I wish someone would help us out with this guy. It would make the neighborhood a whole lot safer." A few days later, when Clyde is driving Daisy home from school, Daisy tells Clyde that she is pretty sure she saw the man who tried to grab her when she and Clyde drove past the park. Clyde arrives home and tells Bonnie. While Clyde is calling the police, Bonnie grabs a handgun and loads it. Bonnie then tells Clyde that she is going to "take care" of the situation and that she is not going to wait for the police because she thinks they will take too long. Clyde drives Bonnie to the park where they spot a man who is 5'11" and wearing an orange hat talking to a group of kids who were running around. Bonnie wonders out loud if "that is the guy" and Clyde responds, "I thought you said you were going to take care of it, think of Daisy!" Bonnie then exits the vehicle, approaches the man, and yells "stay away from those kids!" as she fires the gun at him killing him instantly. Bonnie and Clyde later learn that the man was a soccer coach who was running a warm-up before practice.

What crimes is Bonnie guilty of, if any (do not discuss conspiracy).

What defenses does Bonnie have, if any?

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**Question #2**

Alex and Barry are career criminals who have committed several armed robberies together. During a night of heavy drinking, the two agree that they should pull off one last job before they retire from their life of crime. They decide to rob a local liquor store which always has a lot of cash on hand right before closing. Barry finds two ski masks and loads two guns tells Alex to steal a car from Barry's neighbor because the neighbor always leaves his keys under the floor mat. Alex and Barry hop into the car and start driving toward the liquor store when Alex starts to sober up and rethink his participation in the robbery. Alex tells Barry that he doesn't want to go through with the robbery gets out of the car at a stoplight. As Alex is exiting the car, he tells Barry to remember to put on his ski mask before he robs the store, so he does not get caught. On his walk home, Alex calls the local police department's after hours "tip line" where citizens can make anonymous reports. The outgoing message on the "tip line" tells callers that the messages are not checked every day and that for urgent matters they should call 911. Alex leaves a message saying that he has information that a "local" liquor store is going to be robbed. Meanwhile, as Barry is walking into the liquor store he trips as he is reaching into his pocket to grab his gun. As Barry falls to the ground his gun accidentally falls out and scares everyone. The clerk quickly calls 911 while Barry runs out of the store emptyhanded. Barry and Alex are arrested the next morning.

1. What crimes can Alex and Barry be charged with, if any?
2. What defenses do Alex and Barry have, if any?
3. How should a jury decide the charges against Alex and Barry?

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## Answer Outline/Key

### 1. Bonnie's Crimes:

- First Degree Murder: willful, deliberate, premeditated
  - Brought a loaded gun
  - Said she was going to "take care of it"
  - Did not ask V any questions or wait for him to respond or react
  - Sat in car wondering what she should do
- Second Degree Murder: express malice
  - Murder Second as opposed to Murder First because Bonnie paused when she got to the park.
- Manslaughter:
  - Imperfect defense of another:
    - Man roughly matched description given by Daisy
    - Was around a group of kids
    - Were kids entitled to use self defense
    - Was there an "immediate threat" to the kids?
    - Was deadly force necessary?
  - Heat of passion:
    - Daisy was V of attempted kidnapping
    - Clyde tells her to think of Daisy
    - Was Bonnie's presented with a situation which would cause a reasonable person to be so emotionally inflamed that he/she would not be able to reason clearly?
    - Was there time to reflect?
      - Bonnie actually appears to be reflecting before shooting BUT there is an argument that Clyde inflamed her passions by telling her to "think of Daisy!"

### 2. Bonnie's Defenses:

- Mistake of law:
  - Detective Smith told her that the P.D. was understaffed and had no leads and that if someone "took care" of this problem it would make the neighborhood a whole lot safer.
  - Was Detective Smith giving legal advice or just talking informally?
  - Did he tell Bonnie that she should shoot the man or was he asking for more community involvement and awareness?
- Note that manslaughter analysis may come in this section
- Perfect defense of others:
  - Cops tell Bonnie that there are other attempted victims and they need help
  - Daisy says that she thought V was the man who tried to kidnap her
  - Bonnie sees V talking to kids and he fits the description of suspect
  - She tells him to get away from the kids

**Fall 2021, Exam Question #2**



### Answer Key/Outline:

#### Alex and Barry's Crimes:

- Conspiracy (Barry and Alex): Intentionally entering agreement with intent that target crime be accomplished and one member does overt act.
  - Agreement
  - Overt act: stealing car, loading guns, finding ski masks
- Attempted Robbery (Barry): substantial step with intent to commit target crime
  - Entering store while reaching for gun
  - Intent can be inferred from surrounding circumstances + Barry is only stopped when he trips and accidentally shoots clerk.
- Car theft/larceny (Alex)
- Accomplice liability: provide advice, counsel, support, etc. with intent that crime be committed.
  - Alex's liability for Barry's attempted robbery?
    - Did Alex aid and abet Barry when he reminded him to put on his mask?
  - Barry's liability for the car theft?
    - Did Barry aid and abet Alex's theft by telling him to steal a car and telling him keys are under mat?
- Conspiracy liability (Pinkerton Doctrine): parties to a conspiracy are liable for crimes committed by other members that are done to achieve the target of the conspiracy and are reasonably foreseeable.
  - Alex's liability for Barry's attempted robbery?
  - Barry's liability for Alex's car theft?
    - Done in furtherance? Was theft reasonably foreseeable to Barry?

#### Defenses:

- Voluntary intoxication for both: voluntary intoxication can negate specific intent crimes; we are told they are heavily intoxicated
- Withdrawal from the conspiracy (Alex): renounce participation in conspiracy to other parties involved and thwart conspiracy by notifying authorities
  - Was leaving a message on an after-hours tip line a sufficient attempt at thwarting the conspiracy?
- Abandonment of attempted robbery by Barry?
  - Did fleeing the scene after tripping and dropping his gun constitute an abandonment of the attempt?
    - Was abandonment done voluntarily?
    - Did abandonment occur before substantial step?

#### How should jury decide (issues):

- Were Barry and Alex too drunk to enter into a conspiracy? Was Barry too intoxicated to attempt robbery?
- Withdrawal from conspiracy by Alex? Was calling enough? Alex would still be liable for conspiracy and car theft.
- Aiding and abetting by Alex even if he withdrew from the conspiracy.
-

1)



**BONNIE CRIMES**

**MANSLAUGHTER**

EXPRESS: VOLUNTARY

Manslaughter is the unlawful killing of a human being with express malice aforethought requires the defendant to have a sudden heat of passion, that the defendant becomes, inflamed, that requires more than words. ) - *incomplete rule.*

Here, we can see Bonnie had called the police when Bonnie had first heard of the incident of a tall man wearing a red hat trying to kidnap her daughter, she called the police. Once the police arrived and talked to Bonnie and Clyde they had discussed that they had received numerous complaints about the same thing happening in the neighborhood, and unfortunately the police did not have enough staff to be able to handle the problem. Once, she had heard about her daughter spotting the man, Clyde went to phone the police and Bonnie went to grab her handgun and loaded the gun. The sudden heat of passion requirement could be met here. The facts do not describe if Bonnie had the intent previously to kill the man, but based on the fact pattern, one could assume that she had acted in the moment. She told Clyde in that moment that she was going to "take care" of the situation. Based on her behavior it could be implied that this was a sudden moment of a heat of passion. The more than words requirement is also demonstrated with the fact that the unidentified man had recently tried to kidnap her daughter. In this situation any reasonable adult could have argued that normally one would call the police, however, in this situation with the police being under staffed it could be argued that her last thought of taking care of the situation herself could be considered a moment of heat of passion. However, due to the fact that she said that the police would take 'too long' this could

show more intent than simply, a heat of the moment. Once she shot him she fulfilled the requirement of the unlawful killing of another human being.

Thus, she could possibly be found guilty of Voluntary Manslaughter.

IMPLIED: INVOLUNTARY - *not really an issue on this exam but good analysis*

Manslaughter is the unlawful killing of another human being with implied Malice aforethought requires the defendant to have committed a crime and have owed a standard of care and was negligent in performing that duty.

Here, Bonnie did not owe a standard of care to anyone nor was she negligent in performing that duty.

Thus, Bonnie may not be found guilty under the theory of involuntary manslaughter through negligence.

## **2ND DEGREE MURDER**

### EXPRESS:

Second degree murder is the unlawful killing of another human being with express malice aforethought with the intent to kill, however is not willful, deliberate or premeditated.

We could assume that Bonnie did not know the man would be at the park when he was. This crucial element is not stated in the facts. Bonnie did not know until Clyde arrived home with their daughter. This new piece of information could show that it was not premeditated. Here, we see that Bonnie grabbed the gun right as Clyde was about to telephone the police and stated she would "take care" of the situation, and she refused to wait for the police because they would take too long. There was a sense of urgency and a certain quickness in the facts due to the fact that she believed she could catch the suspect



*good analysis!*

before he escaped. The facts do not state if she intended to use the gun for self protection or for killing him. nor do they state whether she wanted to confront the man, or do a citizens arrest before the police arrived. This could show that she did not necessarily intend to kill the man when she loaded the pistol. Once, Clyde drove Bonnie to the park she asked "is this the guy!" and Clyde responded "I thought you said you were going to take care of it, think of Daisy". Due, to the fact that she confirmed that the man was in fact who she believed him to be at that moment, the facts do not state whether she had exited the vehicle with the gun or had pulled out the gun. However the shooting of the man could be argued that was deliberate.

Thus, Bonnie could be found guilty for second degree murder, if she had not planned to kill the man originally.

IMPLIED:

*good*

Second degree murder is the unlawful killing of another human being with implied malice aforethought with a reckless disregard to human life (depraved heart), intent to cause great bodily injury to the victim or the defendant to have committed a non enumerated felony.

Based on the facts that were given in this hypothetical it is not clear if the defendant had the specific intent to commit great bodily injury. However once she had loaded up her pistol, it can be inferred that she was aware of the weapon she was carrying could cause great bodily injury if it were to be used inappropriately and accepted the risks once she had decided to go "take care" of the situation.

*good*

Thus, it is possible for Bonnie to be found guilty second degree murder under reckless disregard to human life or intended to cause great bodily injury.

**1ST DEGREE MURDER**



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EXPRESS

First degree murder is the unlawful willful, deliberate and premeditated killing of another human being.

Bonnie loaded up her pistol and said she was going to "take care" of the situation. Bonnie then said she was not going to wait for the police. She had known the police could have arrived but not on time to do what she wanted to be done. She is later driven from her home with the gun in her hand and confirms that the man is who she believes him to be and shoots him. The ride from her home and the confirmation of the man shows a willful and deliberate act. The amount of time between Clyde getting in the car and driving her to the park is not specified but it was enough time for her to step out of the car and confirm she was going up to the right person. It can be inferred that she confirmed she was going to shoot the correct person. In that case, it could be shown her actions were premeditated. Due to the fact that she knew, she needed to see the man who had tried to kidnap her daughter just a few days earlier. *good analysis*

Thus, she would most likely be held guilty for first degree murder.

IMPLIED ✓

First degree murder with implied malice aforethought includes a felony-murder that is in the enumerated felonies.

Bonnie was not in the commission of a felony when this occurred and therefore felony murder does not apply to her.

**BONNIE DEFENSES**

**IMPERFECT DEFENSE OF OTHERS**

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Imperfect self defense requires the defendant to have an unreasonable belief of imminent fear of death or great bodily injury, and the use of force would have been necessary. However, one of these beliefs must be unreasonable.

Bonnie could say that she believed the man was going to try to kidnap other children. Kidnapping could lead to great bodily injury and her fear was imminent due to the fact that the man was with children in that moment. The use of force to stop the man, she believed in that moment was deadly force. So, she shot him to stop him. However, the belief that deadly force was unreasonable due to the fact that the man was not who she believed him to be nor do the facts state whether he was using any force towards the children.

*good!*

Bonnie could assert the defense of Imperfect self defense of others.

*— this belongs under manslaughter analysis*

**DURESS**

Duress is the defense of the defendant to have been under extreme mental pressure to have performed the illegal act.

*incorrect rule statement*

The fact pattern does not specify how long the acts took however, the few days that passed knowing that there was a man trying to kidnap children in her neighborhood could suggest that she felt duress. Then, once her husband told her to think of her daughter, it could be argued that she was under immense pressure which could have caused her to commit the illegal act.

*duress applies when a commits the crime under a threat of immediate danger to themselves or another.*

Thus she could assert the defense of Duress.

**AUTHORITY**

*mistake of law*

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The defendant must have relied on advice from an authority to have committed the illegal act.

**END OF EXAM**

good job! You spotted most of the issues & provided good analysis.  
Duress is not an issue b/c nobody threatened to harm/kill Bonnie if she didn't shoot orange hat.

2)

80 (8/22)

Barry

Potential Charges

Conspiracy

reach an agreement to commit a crime w/ the intent the crime be completed

Conspiracy requires two or more individuals planning to commit a crime, then a member of the group does an overt act in furtherance of the crime.

Here, Barry and Alex, both intoxicated, plan to rob a store, then Barry finds two ski masks and loads two guns, then tells Alex to steal a car from Barry's neighbor. The ski masks and the loaded guns are sufficient to prove there was an overt act in furtherance of a target crime.

Barry is likely to be found guilty of conspiracy.

w/ the intent that the crime be completed

Attempt

Attempt requires a substantial step be taken to commit a target crime. Substantial steps are usually seen as a point of no return, where once they are committed, it is difficult to back out. A person can only negate an attempt if they willingly choose to not follow through with the target crime. If they are an accomplice, they must make it known to the group that they are no longer in association with the target crime, then take a substantial step in an effort to stop the crime.

Here, Barry willfully goes into the liquor store that he intends to rob. Upon entering the store, he trips and drops his weapon, which discharges and scares everyone inside.

no



Walking into the store and reaching into his pocket to grab his firearm is a substantial step in furtherance of committing the target crime.

Barry is likely to be found guilty of attempt.

Robbery

Robbery is the taking of another persons property by force or fear.

*good analysis*

Although Barry failed to commit the robbery, Barry did commit attempted robbery.

Attempt, as shown above, requires a substantial step be taken in furtherance of the target crime. Robbery requires the unlawful taking of property of another by force or fear. There is sufficient evidence to support that Barry, when grabbing his gun, intended to unlawfully take money and items from the liquor store by force with the gun, or by fear of using the gun. Even if Barry claims that a blank was in the gun when it discharged, the element of fear behind the capacity of the gun and what a reasonable person would infer defines the magnitude of the capacity of the gun, meaning if a reasonable person saw the gun, they would assume the gun is loaded, and that is what a reasonable jury is looking for.

*gun didn't discharge*

Barry would likely be found guilty of attempted robbery.

Accomplice Liability

*need rule!*

*allows a person to be convicted of a crime they didn't personally commit if they offer advice, counsel, aid*

Accomplice liability is the theory that, when committing an illegal act, all members of the group who are aware of the principle's intention to commit a crime can be charged with the same crime the principal can be charged with. *etc.*

Since Barry and Alex planned to commit a robbery together, up until the point at which Alex backed out of the group, all the crimes they committed can be transferred to each other. This comes into play with the theft of the car, which Alex stole. Because Alex was

in cahoots with Barry on the robbery of the store at the time the car was stolen, Barry could also be guilty of the theft of the car.

Barry would likely be found as an accomplice to any acts Alex committed in furtherance of committing the target crime.

Larceny — Barry liable also under Pinkerton doctrine.

Larceny is the unlawful taking of another's property, then convert the stolen item, but not gain title.

Barry told Alex to steal a car from Barry's neighbor because Barry knew that his neighbor always leaves the keys under the floor mat. Alex proceeded to unlawfully take the car from Barry's neighbor. Barry can be held guilty for larceny because the taking of the car was an act in furtherance of the target crime. Barry then used the stolen car to attempt to commit the robbery.

Car-jacking

Carjacking is the theft of a vehicle where the owner is present and aware at the time of theft.

Alex did not take the car from Barry's neighbor with Barry's neighbor witnessing the theft. Similar to the case where the man on the beach stole the woman's car keys, she could not claim car jacking because she did not have the car taken from her immediate presence, Barry, through the acts of Alex, could not be found guilty of carjacking.

Barry will not be found guilty of car-jacking.

Driving Under the Influence

Very good!

Not car issue

great

To be found guilty of driving under the influence of alcohol, a person must have a blood alcohol content of .08 or higher.

Although there is insufficient evidence to support or reject Barry's blood alcohol level, there is evidence that supports Barry was operating the vehicle under the influence. At one point, Alex sobers up and decides to rethink his participation in the robbery.

There is insufficient evidence to conclude Barry had the required blood alcohol content to be guilty of a DUI.

### Defenses

#### Capacity

A capacity defense is a defense used to negate specific intent crimes, claiming that the individual did not have the mental capacity, or mens reas, to commit the target crime.

Barry could assert the capacity defense by stating that, because of the heavy drinking at the time of making plans and entering into the conspiracy, he could not form the proper intent required to commit a robbery, however, Barry and Alex have successfully committed several armed robberies together, which could infer they have above average knowledge on the act of committing armed robberies.

Barry would likely not have a successful capacity defense claim.

*→ need more discussion - why doesn't intox work here*

#### Conclusion: Barry

Barry will likely be found guilty of attempted robbery, and larceny through the acts of Alex under the theory of accomplice liability. Barry's capacity defense would likely be negated due to his past experience in armed robberies.



Alex

Conspiracy

Conspiracy requires two or more individuals planning to commit a crime, then a member of the group does an overt act in furtherance of the crime.

Here, Barry and Alex, both intoxicated, plan to rob a store, then Barry finds two ski masks and loads two guns, then tells Alex to steal a car from Barry's neighbor. The ski masks and the loaded guns are sufficient to prove there was an overt act in furtherance of a target crime.

Alex would likely be found of conspiracy.

Attempt

Attempt requires a substantial step be taken to commit a target crime. Substantial steps are usually seen as a point of no return, where once they are committed, it is difficult to back out.

Alex conspired to commit an armed robbery, then, using the theory of accomplice liability, once Barry committed the substantial step in an armed robbery, Alex can also be found guilty for the actions of Barry. This means that Alex can be found guilty of attempted robbery.

Alex would likely be found guilty for attempt.

Larceny

Larceny is the unlawful taking of another's property, then convert the stolen item, but not gain title.



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Barry told Alex to steal a car from Barry's neighbor because Barry knew that his neighbor always leaves the keys under the floor mat. Alex proceeded to unlawfully take the car from Barry's neighbor, then deliver the vehicle back to Barry to use for a target crime.

### Car-jacking

Carjacking is the theft of a vehicle where the owner is present and aware at the time of theft.

Alex did not take the car from Barry's neighbor with Barry's neighbor witnessing the theft. Similar to the case where the man on the beach stole the woman's car keys, she could not claim car jacking because she did not have the car taken from her immediate presence, Barry, through the acts of Alex, could not be found guilty of carjacking.

Alex will not be found guilty of car-jacking.

### Accomplice Liability

Accomplice liability is the theory that, when committing an illegal act, all members of the group who are aware of the principle's intention to commit a crime can be charged with the same crime the principal can be charged with.

Since Barry and Alex planned to commit a robbery together, all the crimes they committed can be transferred to each other. This comes into play with the theft of the car and the attempted robbery of the liquor. At the time the vehicle was stolen, Alex intended to steal the vehicle in furtherance of the target crime.

All crimes Barry committed can be transferred to Alex under the theory of accomplice liability, unless Alex asserts sufficient defenses.

### Robbery

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Robbery is the taking of another persons property by force or fear.

Although Barry failed to commit the robbery, Barry did commit attempted robbery. Attempt, as shown above, requires a substantial step be taken in furtherance of the target crime. Robbery requires the unlawful taking of property of another by force or fear. There is sufficient evidence to support that Barry, when grabbing his gun, intended to unlawfully take money and items from the liquor store by force with the gun, or by fear of using the gun. Even if Barry claims that a blank was in the gun when it discharged, the element of fear behind the capacity of the gun and what a reasonable person would infer defines the magnitude of the capacity of the gun, meaning if a reasonable person saw the gun, they would assume the gun is loaded, and that is what a reasonable jury is looking for.

Alex would likely be found guilty of attempted robbery under the theory of accomplice liability.

### Defenses

#### Defense to attempt

*PINKERTON*

A person can negate attempt if they take a step to not follow through with the target crime. For ~~accomplice liability~~, they must make it known to the group that they are no longer in association with the target crime, then take a substantial step in an effort to stop the crime.

Alex could attest that he told Barry that he no longer wanted to participate in the robbery, and proceeded to leave the vehicle before the substantial step was taken, however, when Alex then notified the police "tip line" and left a message notifying the police department of the robbery, Alex failed to specify which local liquor store was going to be robbed. Furthermore, the tip line states that it is not checked every day, and all urgent matters should be directed to 9-1-1.

*good analysis*

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Alex would likely not have a successful defense to attempt claim.

### Capacity

A capacity defense is a defense used to negate specific intent crimes, claiming that the individual did not have the mental capacity, or mens reas, to commit the target crime.

Alex could assert the capacity defense by stating that, because of the heavy drinking at the time of making plans and entering into the conspiracy, he could not form the proper intent required to commit a robbery, however, Barry and Alex have successfully committed several armed robberies together, which could infer they have above average knowledge on the act of committing armed robberies. In Alex's case, because Alex made an effort to back out of the group, and made it known that he did not want to participate in the robbery, a jury could infer that Alex, at the time of entering into the conspiracy was unable to form the proper mental capacity necessary for a robbery claim. If Alex is able to prove he did not have the specific intent required to commit a robbery, despite his many years experience, then he could use this in junction with the defense to attempt and potentially only be charged with conspiracy and larceny.

Alex would likely not have a successful capacity defense claim.

### Conclusion: Alex

Alex would likely be found guilty of larceny for the stolen vehicle, and attempted robbery through the theory of accomplice liability. Alex's best defenses would have to be used to prove that, at the time of entering into the conspiracy, he did not have the proper mental capacity, then upon sobering up, he formed the proper intent and took a step in an effort to stop the target crime from occurring; however, Alex was not descriptive with tip line phone call, and he ended up leaving a message, knowing that any urgent matters must be notified to 9-1-1. Alex would likely be found guilty of all charges.

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**END OF EXAM**

Very good answer!

A few notes- accomplice liability & liability @ a co-conspirator are separate theories of liability. Both applied here & both should be discussed as separate issues. Alex had an argument that he withdrew from the conspiracy, arguably cutting off conspiracy liability under the Pinkerton doctrine, but he also gave Brown a helpful remark about the robbery so he is likely liable for attempted robbery as an accomplice if not as a co-conspirator