

Question 1

Two men, Abe and Bob are methamphetamine users who occasionally sell methamphetamine together in order to support their habits. One morning, Abe and Bob decide to start selling together on a larger scale in order to make more money.

Abe then contacts a well-known methamphetamine manufacturer named Charles. Abe asks Charles if Charles would be willing to produce methamphetamine that Abe and Bob can sell. Charles states that he is only willing to produce the methamphetamine and will not be involved in its sale. Charles normally charges \$1,500.00 per batch but agrees to lower his rate to \$1,200.00 per batch after Abe promises to order one "batch" per month. Charles also demands that Abe provide him with a secure location to work because "cooking" methamphetamine can be dangerous. Abe agrees to this term as well.

Abe then recalls that his relatives in town have a vacation home that they rarely use. Unbeknownst to Bob, Abe breaks into his relative's garage to scout out the location. While in the garage, Abe steals a coin collection he finds on a shelf. Abe also notices a door connecting the garage to the home. He tries the door, hoping he can enter the residence and find more valuables, but the door is locked, and he quickly gives up when he notices an alarm key-pad on the wall right outside the door.

The next morning, Abe calls Bob and Charles and tells them to meet him at his relative's vacation home. All three enter the garage and set it up so Charles can "cook" his first "batch" of methamphetamine. Charles gets to work while Abe and Bob attempt to find buyers for the methamphetamine at a local bar. While at the bar, Abe and Bob meet Dave, who is an undercover police officer assigned to the local narcotics task force. Abe and Bob offer to sell Dave some methamphetamine and the three head back to the vacation home to complete the sale.

The three arrive back at the vacation home as Charles is finishing up the first batch of methamphetamine. In the garage, Abe and Bob each smoke some methamphetamine and offer some Dave, who declines. Abe says to Dave, "this stuff is really strong, you should try some unless you're a cop." Dave again declines but offers to pay top price and pulls out a wad of money. Suddenly, Bob lunges at Dave and try to wrestle the money out of his hands. Seeing this, Charles says, "This is not what I signed up for. I'm not doing business with you guys anymore. I'll get my equipment later." Charles then exits the garage as Abe and Bob struggle with Dave. Dave manages to arrest Bob and Dave before they take his money.

What crimes are Abe, Bob, and Charles guilty of?

What are their possible defenses?

Question 2

Bonnie and Clyde have a ten-year-old daughter named Daisy. One morning, Daisy comes running into the house in tears. She tells Bonnie and Clyde that she was playing in the park when a tall man came up and offered her some candy. Daisy said that she told the man she did not want any candy and he then grabbed her arm. Daisy screamed and the man let her go. Daisy tells Bonnie and Clyde that the man had brown hair, wore a red hat, and drove off in a dark blue van.

Bonnie and Clyde call the police who come out and interview Daisy. A Detective tells Bonnie and Clyde that there have been several reports of “this sort of thing” but without more information, it is unlikely that the suspect will be caught. The Detective then says, “If it were my kid, I would just shoot the guy if I ever saw him!”

Two days later, Clyde is at a bar drinking with friends when Bonnie calls him. Bonnie tells Clyde that Daisy just told her that she thought she saw the man again at the park but Daisy did not get a good look at him. Clyde drives home to meet Bonnie. Bonnie tells Clyde that she has just gotten off the phone with the police and they said that they would send an officer to the park when they got a chance. Unsatisfied with the response from the police, Bonnie and Clyde decide to go over to the park to “check things out.”

Before they go, Bonnie grabs a handgun and loads it in front of Clyde. Clyde asks Bonnie why she is loading a gun and Bonnie says she wants it in case they have to “protect themselves.” Bonnie drives Clyde over to the park and they parking lot looking for the man who Daisy saw. Five minutes later Bonnie sees a man named Kyle walk over to a black van parked near the swings. Kyle is 5’7” and is wearing an orange hat.

Bonnie points out Kyle to Clyde. Clyde says, “That guy doesn’t look very tall” and Bonnie replies, “Think about Daisy!!” Bonnie then hands Clyde the gun. Clyde watches Kyle for three more minutes before he gets out of the car. As Clyde opens the door to exit the vehicle Clyde says, “I don’t think this is such a good idea. Maybe we should wait for the police.” Bonnie says, “Do you see any cops around here? What if he is here to grab another defenseless child?!” Clyde exits the vehicle.

Clyde walks over Kyle and says, “You’re the jerk who tried to kidnap my daughter!” Kyle looks confused and says, “I don’t know what you’re talking about!” Clyde then says, “You’re probably out here trying to find another kid to kidnap!” Before Kyle can respond, Clyde pulls out his gun and shoots Kyle, killing him instantly.

What crimes, if any, are Bonnie and Clyde guilty of? What are their possible defenses?

Issue Outline:

Essay #1: Meth

- Abe, Bob, Charles → Conspiracy to manufacture/distribute meth
 - Charles → Did Charles Agree to Enter into Conspiracy?
- Abe → Larceny
- Abe → Attempted Residential Burglary
- Abe, Bob, Charles → Attempted Robbery (discussion about reasonable foreseeability of robbery)
- Abe, Bob, Charles → Attempted Sales of Meth
- Charles → Ineffective withdrawal from conspiracy

Essay #2: Kidnap

- 1st Degree Murder
- 2nd Degree Murder
- Voluntary Manslaughter:
 - Heat of Passion Analysis
 - Unreasonable Defense of Others
- Voluntary intoxication
- Defenses:
 - Mistake of Law
- Accomplice Liability for Bonnie

1)

Conspiracy

A conspiracy is an agreement by two or more people to commit a criminal act or a series of criminal acts (I.E manufacturing and selling meth).

Mens Rea-

Both parties have the intent to produce the desired outcome of the conspiracy (production and sale of meth)

Here, Abe and Bob enter into an agreement to sell methamphetamine together in order to "make more money".

Abe and Bob satisfy the mens reas needed for a criminal conspiracy.

Actus Rea-

Conspiracy requires a member of the party take an overt step in the direction to complete the conspiracy in order to satisfy the needed actus rea.

Here, Abe and Bob enter into an agreement to sell meth and take several overt steps toward its completion (enlisting a chef, finding a cooking location, recruiting a customer)

Conclusion - Abe and Bob have entered into a criminal conspiracy to sell meth.

Crimes by Abe-

Burglary-

Unlawful entry into a building with the intent to commit theft or any felony.

Here, Abe breaks into his relatives garage to scout for a potential cooking sight for their operation. It could be argued that Abe does not enter this building with the intent to commit a felony simply to scout it out. His future intention to maybe cook meth there does not satisfy the mens rea of (intent to commit a felony) he simply entered the building with an open mind to establish his intent after he

had seen the building. This would be classified more as a breaking and entering or a trespass rather than a burglary because he did not enter with intent to commit a felony.

Conclusion-Abe did not commit a burglary on his initial entrance into the garage.

Larceny-

The unlawful taking and asportation of the property of another without their consent.

Here, while in the garage Abe steals a coin collection he finds on the shelf. The term steals leads me to believe the property is not his and that he removed it from the premises, although this is not expressly said in the facts. If Abe does take the coin collection, even a few feet away from the original resting spot then he has asported it and committed a larceny of his relatives property.

It is very likely that Abe committed a larceny.

Attempted Burglary-

An attempt occurs when a party has the intention (mens rea) to commit a crime, takes an overt step (actus rea) but the completion is halted by a unforeseen circumstance.

Here, Abe enters into the garage and sees a door leading to the main house. (see supra Burglary definition) Abe sees the door and is hoping that he can find more valuables inside to potentially steal (intent to commit theft or felony). Abe goes and try's the door (overt step, actus rea). However, He is halted by a locked door armed with an alarm code. This unforeseen circumstance does not relieve Abe of his attempted crime.

Abe committed an attempted burglary.

Burglary-

(See definition supra)

Abe enters into the garage, which is not his property for a second time when he returns to begin to setup their cook location. He has again entered into a property but now has intent to commit a felony (cooking and distribution of meth). This unlawful entry with a an intention to distribute drugs satisfies the elements of a burglary.

Abe most likley will be convicted of burgalry for his reentry of the garage.

Solicitation-

The recruiting of others to participate in activity that is illegal.

Here Abe, recruits Charles to help cook meth and he also attempts to recruits Dave to purchase meth.

Abe likely is guilty of criminal solicitation.

Attempted Solicitation-

(See attempt Supra)

Here Abe and Bob try to find people to sell drugs to. They find Dave who is an undercover cop. Just because they found a cop instead of a real customer does not change the fact that they attempted to solicit another into illegal activities.

Both Bob and Abe attempted to solicit Dave.

Attempted Robbery-

(See attempt definition supra) Robbery is the unlawful taking of the property of another from their person by use of force or fear.

Here, Abe will argue that he did not intend to Rob Dave and was simply helping Bob wrestle with him. However, the prosecution will argue that Abe could see what Bob was doing and jumped into trying to achieve the desired result (taking of the money) The facts don't lend us any insight to Abes intent. They just say that Abe struggled with Dave. It could be Attempted robbery or a variety of other outcomes.

It is unclear whether Abe was attempting to rob Dave.

Vicarious Culpability-

Abe is liable for the crimes of his criminal conspiracy as long as the crimes were foreseeable and in the furtherance of the conspiracy.

Here Abe, could be liable for Bob's attempted Robbery if they do not consider him an active party already. It is foreseeable in the trade of drug dealing that a drug dealer would lead someone to a secluded area and try to rob them. However, our imperfect element here is whether it was done in

the furtherance of the conspiracy. I think it would be if we had facts to support that the stolen money was somehow going to go back into the drug dealing business (help buy supplies or a permanent location).

It is unclear whether Abe will be held to answer for the Attempted Robbery.

Crimes-Bob

Conspiracy (defined, analysis and conclusion supra)

Burglary

(See definition supra)

Here, Bob enters into the garage with Abe and Charles. The purpose of entering into the building is to cook and distribute meth out of the building (felony) . It can be argued, that Bob did not know they were entering into the Garage unlawfully. It never states that he knew whether or not they had permission to use the garage so he may of thought his entry was lawful. It is unclear by the facts.

It is unclear whether Bob has the necessary mens rea for Burglary.

Robbery

See definition Supra

Here, Bob tries to Rob Dave once Dave pulls out his wad of money. He try to do so by the use of force. He wrestles with Dave but is unsuccessful and gets arrested.

Bob is not likely not guilty of robbery because he was unsuccessful at obtain the money

Attempted Robbery

(See Attempt and Robbery definition above)

Here, he wrestles with Dave while trying to get the money but is unsuccessful because he was arrested. Being arrested does not cut off liability for attempted robbery because he had already taken an overt step.

Bob is most likely guilty of attempted robbery.

Vicarious Culpability-

(see definiton supra)

Bob is most likely to be held liable for most crimes committed in the fact pattern by Abe. The crimes Abe committed were both foreseeable and done in the furtherance of the conspiracy. The only crime likely he will not be held liable for is the larceny committed by the theft of the coin collection. This crime was not done in the furtherance of the conspiracy or even foreseeable. Bob didn't even know he was there.

Bob will be held as an equal party for the crimes of Abe.

Crimes- Charles

Conspiracy-

See definiton above

Here, I do not believe Charles agreed to be apart of the criminal conspiracy formed by Abe and Bob. He agreed to cook meth which was a business venture but did not share the same mens rea as his two cohorts. Charles just wanted to receive payment for his cooking of meth, he did not really care about the end results. The goal of the conspiracy was to sell meth and make money. Charles didn't have that goal, they could of flushed the meth down the toilet and he would of been just as happy. He did not want to produce the result the conspiracy was intended for.

I do not believe Charles entered into a criminal conspiracy with Abe and Bob.

Accomplice-

An accomplice is someone who aids our encourages another in the commission of a crime.

Here, Charles definitely provides aid and encouragement to the crimes being committed by Abe and Bob. If he does agree to cook the meth then they might never even want to continue selling it. His agreement to produce the meth and then supply it to them at a discounted price could be considered encouragement for the future sale of the meth. However, Charles will argue that he was just cooking it and what they did with it was none of his business. This is a poor argument. His offer to cook and discount makes him an accomplice to this crime.

Charles is liable as an accomplice for the distribution of meth.

Burglary-

(see definition above)

Here, they all enter into the garage with the intent to cook meth and distribute meth. However, it does not state whether Charles had knowledge that they were making an unlawful entry into the garage. If Charles knows they are entering unlawfully and he has the intent to commit a felony (cooking meth) then he has satisfied the elements for burglary.

It is unclear whether Charles committed a burglary.

Withdrawal-

A withdrawal occurs when a member of a crime announces either to the parties involved in the crime or alerts and warns the police (tells details of crimes and participants), that he is no longer wanting to participate in the criminal activity. If an overt act has been taken withdrawal is no longer valid.

Here, during the attempted robbery of Dave. Charles throws his hands up and says this is not what I signed up for. This would not be considered a withdrawal because an overt step to the crime had already been taken.

If Charles is considered a member of the Robbery of Dave his withdrawal is likely not valid.

Voluntary Intoxication-

Mens rea for certain crimes can be negated by Voluntary intoxication (Specific Intent)

Here, Abe and Bob are smoking meth before they attempt to commit robbery upon Dave (see Robbery definition above). The facts give no consideration to their mental state also robbery is a general intent crime. Voluntary Intoxication is a poor defense here.

Self Defense-

Reasonable use of force in order to defend yourself from another.

It could be argued that Abe and Bob acted in self defense in their struggle with Dave. This is a very poor defense here. Abe and Bob are the initial aggressors and also in the commission of a crime so their defense of self defense is not valid here.

Self defense cannot be used for Battery against Dave.

Necessity-

Bob and Abe will argue they committed the crimes because they needed money. However the court does not normally see this as a valid form of necessity.

Bob and Abe do not have a solid defense of necessity

Diminished Capacity-

Bob and Abe will argue that they have a diminished mental capacity from repeated drug abuse. However, diminished capacity is only a defense to crimes if the parties are unaware or unable to control their actions. Bob and Abe seem to be completely aware of the actions they are taking (planning, recruiting a cook, etc)

Bob and Abe will most likely not have a defense of capacity.

END OF EXAM

2)

Crimes (B & C)

Murder (Intentional/Unintentional)

Murder is defined as the unlawful killing of another human being with malice aforethought. Under murder, a killing occur either intentionally or unintentionally. Based on the facts, it is likely that a Court will find this to be an intentional killing, as Clyde (C) demonstrate an intent to kill the man who he believed to be trying to kidnap his daughter. Within the intentional killing spectrum, a killing can be tried as voluntary manslaughter, 2nd degree murder under an express malice theory, or 1st degree murder. With unintentional killings, the crimes are involuntary manslaughter, 2nd degree murder under an implied malice theory, or felony murder, which is the killing of another that occurs during the commission of an enumerated felony. The enumerated felonies are burglary, arson, rape, robbery, and kidnapping but different statutes exist depending on the state.

Voluntary/Involuntary Manslaughter

Voluntary manslaughter is the killing without malice under either a "heat of passion" theory or imperfect self-defense or defense of others. The self-defense theory will be discussed in the defense section. Heat of passion occurs when there is a sufficient provocation on the part of the defendant that overcomes his/her ability to rational analyze the situation. The victim must be the provocateur for the defendant and there cannot be a sufficient "cooling off" period. Here, the facts do suggest that C was provoked to go protect his daughter, but the victim was not the one that caused the initial provocation. A man with brown hair wearing a red hat, and driving a dark blue van does not match someone of Kyle's (K) description, according to the facts. Furthermore, the facts describe a scenario where several took place between Daisy's (D) initial meeting with the stranger and C's meeting Kyle, so the Court will find that voluntary manslaughter is not the appropriate charge. The other applicable theory is imperfect self defense, which will be discussed in the defenses section.

Involuntary manslaughter is a killing without malice, without an intent to kill as well as an absence of conscious disregard to human life. The applicable standards are criminal and gross negligence, meaning acts that show an utter lack of care or recklessness for the consequences or they fail appreciate the danger of their activities. Here, the facts are not very applicable. C showed an intention to protect his daughter and the fact that Bonnie (B) handed him a gun and he only fired once demonstrates a greater intent than negligence. The Court will not find B and C guilty of involuntary manslaughter.

Express Malice/Implied Malice Murder (2nd degree)

2nd degree murder under an express malice theory is defined as killing with an unlawful intent to kill. Here, the facts are more applicable. C's intention to keep his daughter from harm showed that he would have killed to protect. Furthermore, B loading and handing C a handgun meant that they were willing to use to deadly force to keep D safe. When actually confronting K, C stated that he believed K was out to potentially kidnap more kids other than D. K did not have the opportunity to respond before C ultimately shot him, showing an intent to kill. The Court will find that K demonstrated the appropriate express malice intent to kill K when he shot him in the park.

2nd degree murder under an implied malice theory is defined as killing with a conscious disregard for human, i.e. a "depraved heart". Here, the actions of C are not indicative of such a theory. C believed that K was terrorizing D when he shot him, and his intent was directed specifically at K when the killing occurred. The Court will not find that B and C committed murder under an implied malice theory.

1st Degree Murder

1st degree murder is defined as the willful, premeditated and deliberate killing of another. Here, the facts described a scenario applicable to such a charge. B and C believed that their actions were protecting their daughter and willfully and deliberately went looking for the man that they believed wanted to kidnap their daughter. While that belief was ultimately mistaken, the actions demonstrated by B and C were of a willful and deliberate nature. B loaded the handgun and handed it to C when confronting K in the park. The recognition of a lack of law enforcement in the area shows they were aware of their surroundings and the likelihood that they would get away with the crime if executed. Based on the facts, the Court will find that B and C willfully, deliberately, and premeditated the killing of another they believed to be their daughter's intended kidnapper.

Accomplice Liability/Conspiracy

The rule for conspiracy is previously mentioned in the first question. Based on the facts, B and C intended to kill the man they believed to be intending to kidnap their daughter. They demonstrated overt acts, like driving around looking for the man who they believed was the potential kidnapper and bringing a loaded handgun as well. The group constituted two members. However, the intent to agree was never explicit within the facts. While B and C agreed to protect their daughter, the facts show that B believed having a gun would be "protection" when confronting K. C demonstrated the intent and willingness to kill, but never expressed an agreement that both would intend to kill K if

given the opportunity. B and C will not found guilty of a conspiracy to commit murder, but an accomplice liability theory is another story.

The rule for accomplice liability is previously mentioned in the first question. Here, B intentionally aided and abetted C's actions by loading the handgun and giving it to C when meeting with K. C fits the definition of direct perpetrator, as he was the one who met with K, demonstrated his intent to protect his daughter by killing the man he believed to be her intended kidnapper and ultimately shooting him which caused his death. B will found guilty of accessory to murder based on her actions and C will be found guilty of murder, based on one of the previously mentioned malice theories.

Defenses

Intoxication (Voluntary/Involuntary)

The intoxication defense can either voluntary or involuntary, but the facts do not suggest an involuntary theory. If the defendant did not form the intent to kill the victim due to his/her level of intoxication, the malice is negated, meaning that a murder will decrease to a voluntary manslaughter charge. Based on the facts, there is insufficient information to determine whether C's bar drinking with his friends was enough to make him intoxicated. If C were to raise the defense, unless he could produce evidence that he was intoxicated to the point that he was unable to form the specific intent for murder, this defense is likely to fail. Even if the defense was successful, C would be found guilty of manslaughter and B would be guilty as an accessory to manslaughter.

Mistake of Law/Mistake of Fact

The rule for mistake of law is when the defendant believes their conduct to be legal under the circumstances, but is not legal in actuality. While this is not generally considered a defense, an exception to this rule is when the defendant relies on the advice of an individual within law enforcement that is responsible for enforcing the law (i.e. judge, prosecutor, police officer, etc.) A case where an individual relied on a 911 operator in Hawaii demonstrated this defense, but was not found applicable to the situation. Here, C will likely state at trial that the detective told him that "If it were my kid, I would just shoot the guy if I ever saw him!" While this statement demonstrates the detective's sympathy, it will not have any effect as the facts described do not implicate K as the intended kidnapper. The Court will find that since C was mistaken as to the identity of D's intended kidnapper, this defense will be ineffectual.

The rule for mistake of fact is that the defendant has a mistaken belief in the surrounding circumstances that their conduct is legal. The defendant does not possess the intent to commit the crime, but based on the totality of the circumstances, they either act or fail to act in a manner that is still objectively legal. Here, the facts do not apply to this possible defense. C's and B's actions describe parents that are looking out for their daughter, but still execute a killing when they approach K.

Defense of Others

The rule for defense of others is similar to the elements of self-defense. Self-defense is defined as the reasonable fear of imminent death or bodily harm from the aggressor and the reasonable use of force to prevent the imminent death or great bodily harm from occurring. When applied to defense of others, the person demonstrating the defense must have the objective and subjective beliefs that both elements (the imminent fear of death or great bodily injury and the use of force's reasonableness) must be present. If one of the elements is not deemed present, then the defendant is found guilty of manslaughter under an imperfect defense of others theory. If both elements are deemed not present, then the defendant is guilty of murder. Here, the theory falls flat. C's belief that K could cause harm to his daughter is subjective, but not objective based on the facts. The person who intended to kidnap D did not match the description of the man D met in the park. Furthermore, K demonstrated no visible aspect of imminent harm or future harm towards C at any time. C was not justified in his use of force against K and his belief that K intended imminent harm was also unfounded. In addition, he demonstrated no retreat when he approached K, so the Court will find that C's defense of others theory is inapplicable, making him guilty of murder.

Furthermore, self-defense would also be inapplicable, as K never presented any great harm to C during their meeting and therefore did not warrant necessary force to deter him from his actions. C is guilty of murder through a number of theories and B is guilty of murder under an accomplice liability theory.

END OF EXAM