

Monterey College of Law

Criminal Law & Procedure

Midterm Examination

FALL 2022

Professor S. Haas

General Instructions:

Answer All Three Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

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Question 1

Dr. Smith runs a successful plastic surgery practice in Carmel. Yesterday, Dr. Smith's biggest competitor, Dr. Jones opened a new office across the street. Enraged, Dr. Smith went to the office and demanded that Dr. Jones close his practice. Dr. Jones refused and said, "It's not my fault that you are not as good of a doctor as me." Dr. Smith went home and told his wife about how upset he was.

The next day, Dr. Smith went to the office and decided that he would just ignore Dr. Jones. At his first appointment of the day, Dr. Smith's patient told him that Dr. Jones was telling everyone that "Dr. Smith was a terrible doctor who had many malpractice lawsuits filed against him." Dr. Smith finished the appointment, drove home, and grabbed his gun. He then drove to Dr. Jones' office and killed him with three shots.

Hearing the gun shots, Dr. Jones' colleague Dr. Hartman ran in to help Dr. Jones. Dr. Smith aimed the gun at Dr. Hartman and said "If you try to save him, I will shoot you too." Dr. Hartman backed out of the office and Dr. Smith fired a warning shot in the wall by Dr. Hartman's head. This bullet hit and killed a medical assistant who was on the other side of the wall.

The police arrived and arrested Dr. Smith who did not resist.

With what crimes can Dr. Smith reasonably be charged and what defenses, if any, may he reasonably raise? What is the likely result in a jury trial? Answer using California Law, Common Law, and the Model Penal Code. Discuss.

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QUESTION 2

Sandy, Amanda and Nancy were very popular social media influencers and best friends. They loved to use their influencer status to get freebies of products. Some additional benefits of their influencing are getting free meals at restaurants or even free hotel stays. In exchange for the free items, the businesses expected favorable posts online about their establishments or products.

Sandy, Amanda and Nancy were very excited to go to an area of California known for its wine. They had been given a free stay at a boutique hotel in exchange for some flattering posts on social media.

After taking some photos of themselves frolicking in the grape vines surrounding the hotel, wearing flowing sundresses and wide brimmed hats, the ladies were very proud of themselves for their hard days' work.

Sandy especially loved to drink wine so as soon as they finished their posts she immediately set out to find a wine tasting room while Amanda and Nancy took a nap.

Sandy found a tasting room close to the hotel; Dante's Wine Em "pour" ium.

Dante had turned a little rustic house into a tasting room. Dante actually lived onsite in the back of the home.

Dante just happened to open the wine tasting room early that day and Sandy was his first customer. Sandy spent the next two hours drinking wine and taking flattering pictures of Dante's Wine Em "pour" ium. She planned to post them later on social media. Other customers filled the tasting room as the day went on and Dante was busy attending to them. He thought Sandy was a little weird for taking so many pictures of herself but decided not to say anything because she would surely buy some of his wine since she had so many tastings.

Since Sandy was an influencer it was custom for her to get free wine tastings and other merchandise so she grabbed a couple bottles of wine from the counter and put them into her purse. Dante, being too busy with his other customers, did not see what Sandy had done.

Seeing that she did not have enough room in her purse for any more bottles, Sandy text Amanda and Nancy to bring large purses over to the tasting room so that they could take more bottles of wine. Amanda responded to Sandy's text that she did not want to wine taste. Sandy replied that she would pay her \$20 dollars to bring her over the second purse and that she did not have to stay and wine taste.

Amanda and Nancy showed up at the tasting room with two very large purses as Sandy had requested.

Amanda gave Sandy the large purse and Sandy gave Amanda the \$20 dollars. Amanda left and went back to the hotel room.

Nancy and Sandy continued wine tasting and when they had their fill, they both walked out without paying for their wine tastings or the bottles of wine. When they returned to the hotel, Sandy gave Amanda one of the bottles of wine since Amanda had not done any of the wine tastings that day.

When Dante realized what had happened later that night – he called the police to report the thefts.

- 1) What crimes, if any, could Sandy reasonably be charged with and what defenses, if any, could she assert?
- 2) What crimes, if any, could Amanda reasonably be charged with and what defenses, if any, could she assert?
- 3) What crimes, if any, could Nancy reasonably be charged with and what defenses, if any, could she assert?

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QUESTION 3

Dante, a diagnosed schizophrenic, attends a party and consumes large amount of alcohol. After few hours, Dante gets in his vehicle and starts driving home. On his way home, he takes a wrong turn, and starts driving on the wrong side of the road. Several other motorists call 911 and report Dante driving on the wrong side of the road at a high rate of speed, waving at people as he passes.

Highway patrol locate Dante and initiate a traffic stop. Instead of stopping, Dante leads the officers on a high-speed car chase. During the chase, Dante continues to drive on the wrong side of the road. To evade the officers, Dante turns off his headlights.

In an effort to end the chase, one of the officers performs the PIT maneuver, causing Dante's vehicle to hit another motorist. After the vehicle comes a stop, Dante is observed screaming for help and refusing to exit his vehicle. He repeatedly says, "they're after me, and I have to keep going ahead, can't you see them, I must get away."

Although, it was a non-injury collision, the motorist ends up dying at the scene as a result of a heart failure triggered by the accident.

After Dante eventually gets out of the vehicle, he runs at one of the officers and starts slapping him screaming, "leave me alone, stop hurting me."

Please discuss under Common Law, the Model Penal Code and the California Penal Code the charges the prosecution might bring against Dante and any possible defenses he might raise.

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Outline for Question 1

Criminal Homicide – Death of the doctor and MA

Murder – Express Malice:

First Degree Murder- upset, drove home after finishing appt, killed Dr. Jones in three shots, calm demeanor considering the statement to Dr. Hartman, did not resist arrest.

Burglary – entered business with a gun (intent to commit felony therein) – felony murder?

Second Degree Murder – Conscious disregard for human life, but express intent stronger argument for the doctor.

Implied Malice – for MA, shooting inside an office building.

Voluntary Manslaughter: HOP – defamatory comments by Dr. Jones regarding Smith’s competence.

Extreme Mental or Emotional Disturbance – MPC

Involuntary Manslaughter – Death of Medical Assistant – warning shot at Dr. Hartmann, MA on the other side of the wall.

Criminal negligence – warning shots, reckless or conscious disregard. Most likely conscious disregard considering the calm demeanor during killing of Dr. Jones, shows that Defendant was not at all reckless, in fact, he was very calculating, even the warning shot, next to the head.

Question 2 - Outline

Sandy’s crimes:

Theft by Larceny: took wine and placed in purse w/o D’s consent. (by herself – first batch)

Defense – mistake of fact – reasonable mistake? since she always got the complimentary bottles, she had consent. Hadn’t paid for anything yet on the trip. Taking pictures of the spot with the catchy title – for posts.

Solicitation: \$20 for large purse: Bring large purse to take wine.

Conspiracy to commit larceny of wine bottles – mistake of fact, thought bottles complimentary – reasonable.

Accomplice liability: Sandy is the perpetrator for wine bottles stolen by her and Nancy.

Voluntary intoxication: General vs. specific for larceny, conspiracy and solicitation.

Amanda’s crimes:

Accomplice – thought Sandy just wanted to drink and get more bottles for later– “she especially loved to drink” Provided purse in return for \$20 after refusing first time. Left immediately after delivering purse.

Conspiracy – mens rea? She played no role in tasting the wine, placing the wine in purses, she left before time for payment, so she did not know the payment arrangement between Sandy and Dante. For the first batch, no evidence to suggest knowledge or intent.

Sandy only gave bottle because Amanda didn't try any, not because of anything to do with the theft of wine.

Nancy's crimes:

Accomplice liability – she, unlike Amanda continued with wine tasting and walked away without paying for it. She also helped Sandy load and carry the purses full of wine back to room, knowing that at no time payment was made.

Conspiracy – Same as Sandy

Voluntary intoxication – same as Sandy

Commercial burglary – bonus issue

QUESTION 3 - Outline:

- 1. Defense of insanity and diminished capacity: waving at other motorists, intoxicated, driving on wrong side of the road. States, he's being chased.*
- 2. Death of motorist: felony murder discussion for MPC and CL, but not CA (not enumerated)*
- 3. 2nd degree murder*
- 4. Battery against officer*
- 5. Self-defense against officer – reasonable, imperfect self-defense. LE exception.*

Criminal Law and Procedure Question 1
charges that could reasonably be brought
against Dr. Smith: Good, id call of the
question.

California 1st degree murder -

Under California Penal Code a 1st degree murder is the killing of another human being with premeditation and deliberation, intent to kill, and express malice. A person may also be charged with 1st degree murder for any killing which occurs during the commission of an enumerated felony.

Dr. Smith's criminal culpability for the charge of 1st degree murder will depend upon whether or not the killings of Dr. Jones and the medical assistant were preceded by premeditation and deliberation on the part of Dr. Smith. very Good

With regards to the killing of Dr. Jones the defendant made a deliberate decision to return home and retrieve his gun before arriving at Dr. Jones' office. Both the drive to Dr. Smith's home where his gun

was located and the drive to Dr. Jones' office would have provided the defendant with ample time to plan and consider the consequences of his actions.

At a jury trial Dr. Smith will likely be convicted of 1st degree murder in California.

California 2nd degree murder -

Under the California Penal Code 2nd degree murder is an intentional killing of another human being without premeditation or deliberation. The defendant must possess the intent to kill or act with a conscious disregard to the value of human life and implied malice.

With regards to the killing of Dr. Jones, Dr. Smith's criminal culpability depends upon his state of mind before and during the commission of the homicide.

Dr. Smith shot the victim three times, and Dr. Hartman entered the room, the defendant threatened to shoot Dr.

Hartman if any attempt to save Dr. Jones was made. This threat clearly demonstrates that Dr. Smith's intention was

to end the life of Dr. Jones.

Still the premeditation and deliberation of retrieving the gun and returning to office render Dr. Smith criminally culpable for 1st and not 2nd degree murder.

Good job.

Voluntary Manslaughter (California PC)

Under California penal code, a voluntary manslaughter occurs during a sudden quarrel and in the heat of passion. In a California, specifically, a defendant may also claim imperfect self defense if the facts as the defendant believed them to be would have led a reasonable person to use deadly force to defend themselves from an immediate threat to their life.

The killing of Dr. Jones did not occur during a sudden quarrel because at the time of his actions Dr. Smith had already made the deliberate decision to use deadly force against Dr. Jones by driving to get his gun. The same facts would apply to the imperfect self defense since at the time of the altercation Dr. Smith

had already decided to use deadly force.
What about provocation due to defamatory statements.

Involuntary Manslaughter (California)
Under California Criminal Law an Involuntary manslaughter is an unintentional killing caused by gross, criminal negligence on the part of the defendant.

Dr. Jones was shot three times, so Dr. Smith's actions were clearly intentional ✓

In a California jury trial Dr. Smith is likely to be found guilty for the 1st degree murder of Dr. Jones, since the act of driving home to retrieve a gun and threatening someone, who would have otherwise attempted to save Dr. Jones show clear premeditation and deliberation. ✓

Common Law Murder

Under Common Law murder is the unlawful or unjustified killing of another human being committed with either the intent to kill or a depraved heart.

In a Common Law jurisdiction Dr. Smith could reasonably be charged with murder because the killing of Dr. Jones was an intentional killing with malice aforethought. Dr. Smith had a prior bad relationship with Dr. Jones and made a conscious decision to attack him with a gun.

In a common law jury trial Dr. Smith will likely be found guilty for murder for the killing of Dr. Jones.

Model Penal Code Murder.

Under the Model Penal Code Murder is any unlawful or unjustified killing of another human being ~~off~~ with malice aforethought, conscious disregard and extreme indifference to the value of human life.

Dr. Smith intentionally shot Dr. Jones three times and threatened Dr. Hartman against attempting to save Dr. Jones. The acts constitute both malice aforethought and extreme indifference.

In an MPC jurisdiction Dr. Smith

is likely to be found guilty for the murder of Dr. Jones.

Medical Assistant ✓ Good job separating 1st degree murder. See supra. the two crimes.

In regards to the shooting of the medical assistant it is not reasonable to charge Dr. Smith with 1st degree murder since there are no facts to establish premeditation or deliberation. ✓ Plus he didn't know the victim was on the other side.

Felony Murder Rule. See supra. the other side
Since Dr. Smith was in the commission of a felony at the time of the murder, prosecution may choose to charge him with 1st degree murder under the Felony Murder Rule. which felony? Burglary
2nd degree murder See supra.

Shooting through the wall in a doctor's office while it is open and staff and patients are present constitutes conscious disregard and implied malice. ✓ Very Good

In a California jury trial Dr. Smith is likely to be found guilty of Second degree murder

In both Common Law and MPC Dr. Smith is likely to be found guilty of Murder with regards to the death of the medical assistant.

The act of shooting through the wall in an open and occupied doctor's office demonstrates a depraved heart and extreme indifference to the value of human life.

Defenses:

Dr. Smith may seek the jury instruction for involuntary manslaughter with regards to the shooting of the medical assistant.

Since Dr. Smith lived as a ~~warning~~ warning to Dr. Hartman the killing could potentially be seen as unintentional.

Very good job.

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2)

State v Sandy

Theft

Theft includes theft by larceny, larceny by trick, theft by false pretense, and embezzlement.

Here, there would be theft by larceny which is when a defendant takes possession of property or money owned by someone else with the intent to permanently deprive them. It requires a showing of 1) wrongful taking 2) without consent 3) asportation or carrying away 4) with the intent to permanently deprive the owner.

Here, Sandy took the wine bottles and began putting them in her purse. There was no consent given by Dante, despite the apparent or assumed consent that Sandy may argue with her being an influencer that is accustomed to free items. Sandy placed them in her purse, and not having enough room, even asked Amanda for two more bags, and carried the bottles back to the room, which satisfies the element of asportation. Sandy had the intent to permanently deprive as she believed them to be free. Sandy left the wine tasting room with the bottles and did not pay for the wine, that she carried away in her belly, and the wine in her purse.

sufficient when she picked up the bottle off the shelf.

Thus, Sandy will most likely be charged with theft by larceny.

Solicitation

Solicitation occurs when an individual commands, encourages, invites or requests another to commit a breach of peace, misdemeanor, or felony. It requires that the defendant requested the crime be completed, intended that the crime be completed, and was

successfully communicated. MPC does not require successful communication, and allows for renunciation.

Here, Sandy solicited Amanda ^{to Nancy} to bring the bags to commit the theft. However, Amanda simply gave the bags, and did not commit the crime. It is not a crime to ask for two larger bags, being influences, they may have wanted to take photos of them on the wine bar.

Conspiracy to commit theft

Conspiracy is the agreement to commit a target crime that requires an overt act under California. It requires the showing of an intent to enter an agreement, an intent to commit the target crime, and an intent that one individual would commit the overt act. An overt act is a step beyond planning and preparation but below an attempt.

Here, Sandy may be found charged with the conspiracy to commit theft with Nancy. While the fact pattern does not suggest whether or not the two discussed the crime, the prosecutor may argue that there was enough evidence to suggest that this was the case, being that Nancy and Sandy continued wine tasting. However, there must be the intent to commit the target crime, which would be the intent to enter into the agreement to steal the wine. The claim that they both entered into this agreement may be found to be dubious because it would require a plurality. Under MPC, only one person need have the mens rea and actus reus, so Sandy could conceivably be charged with conspiracy under MPC.

Very Good Job

Burglary

The breaking and entering of a dwelling at night with the intent to commit a felony therein. Modern burglary has expanded to include entering and remaining in an occupied structure with the intent to commit a crime at the time of entry.

Here, Sandy did not break into a commercial or residential dwelling, but it could be argued that this was a residential building because Dante lived onsite in the back of the home. Sandy most likely was intending to get the wine for free. The facts state that in exchange for free items, the businesses expected favorable posts online about their establishments or products. However, there was no confirmation with Dante about this arrangement. Sandy most likely entered into the building, an occupied dwelling, with the intent to commit the crime of theft at the time of entry. Sandy was an influencer and it was custom to get wine for free. She placed this into her bag without any form of asking, and most likely expected this at the time of entry.

Hot of Assumptions, No facts to suggest
Thus, Sandy may be charged of burglary.

She had intent to take the bottles w/o Dante's consent.

Defenses

Voluntary Intoxication

Voluntary intoxication may be a defense to a specific intent crime.

Here, Sandy may argue that she did not have the required intent to commit any form of theft. Sandy spent the next two hours drinking before even asking Amanda or Nancy to bring bags or join in the wine tasting. Sandy and Nancy continued to drink, suggesting that by this time Sandy may have been heavily intoxicated. Sandy may argue that she simply assumed that Dante knew or had reason to know of her influencer status, and thus she did not form the requisite intent required for any form of theft, or conspiracy, or even solicitation. However, the prosecution may argue that she knew at the time of entry, even before she entered, that she was planning on acquiring the items for free, and when this occurred, she was sober.

Very Good

Thus, Sandy may argue voluntary intoxication for theft, conspiracy and solicitation.

Mistake of Fact

Mistake of fact may negate specific intent crimes whether reasonable or unreasonable. It may negate a general intent crime if reasonable.

Here, Sandy may argue that there was a reasonable mistake of fact and that Dante should have known of her influencer status. Sandy may attempt to argue that because of this, she did not even think that she was stealing as she was under the impression, factual impression, that the wine and the tasting were on the house, or in exchange for a raving business review or pictures. However, the bottles were most likely properly marked and there was no discussion on whether or not this was a possibility. Yet, Sandy may argue that she was so drunk that she had a reasonable mistake of fact and that this was due to her high levels of intoxication. ✓ Good

Sandy may assert the defense of mistake of fact.

Mistake of Law

Mistake of law is not a proper defense if one individually relies on their own misinterpretation of the law, however, it may be a defense under authorized reliance doctrine, which occurs when an individual was told the law by an authorized governmental body or individual.

Here, Sandy may not assert mistake of law even though she may have assumed it was lawful for her to take the wine given her status because it was her own belief.

Thus, Sandy will most likely fail in asserting this defense.

Conclusion

Sandy will most likely be charged of theft by larceny or burglary.

State v Amanda

Aiding and Abetting

Aiding and abetting is when an individual aids, encourages, or counsels the perpetrator before, during, or after the commission of the crime. It requires that the individual actually assist, which is beyond trivial assistance, with the specific intent that the crime be completed. It requires the showing of more than mere knowledge.

Here, more than mere presence is needed to assert aiding and abetting, but it is beyond mere knowledge. There requires a showing of intent that the crime be completed.

Amanda simply brought the purse in exchange for \$20. Amanda was never told why the purse was needed, nor did she have any knowledge the crime would be committed.

Amanda could assert that she believed both Nancy and Sandy were going to pay for both the wine and the tasting. *Good*

Thus, Amanda will most likely not be found guilty of aiding and abetting.

Receiving Stolen Property

It is a crime to receive stolen property with the knowledge that the property is stolen, with the intent to permanently deprive the owner. MPC has expanded to the belief that the property is stolen.

Here, like with aiding and abetting, Amanda did not know that the wine was stolen. The prosecution may argue that she knew the purpose as the facts state "take" but this leaves room for great ambiguity. *Good* Taking could simply mean the movement of the property. The prosecution must show that there is the knowledge that the wine was stolen. They may assert that Amanda knew that the wine was stolen when they were back in the room

discussing their free and lavish lifestyle, but this is a mere extrapolation and not based in concrete facts.

Thus, Amanda may not be guilty of receiving of stolen property.

Conclusion

Amanda may not be charged with any crime.

Nancy

Theft

Theft includes theft by larceny, larceny by trick, theft by false pretense, and embezzlement.

Here, there would be theft by larceny which is when a defendant takes possession of property or money owned by someone else with the intent to permanently deprive them. It requires a showing of 1) wrongful taking 2) without consent 3) asportation or carrying away 4) with the intent to permanently deprive the owner.

Here, Nancy, just like Sandy, grabbed the bottles of wine and tasted alongside Sandy, and when they had had their fill, both walked out without paying for the wine or the tasting. Nancy was most likely carrying one of the bags, wrongfully took the wine, without consent of Dante, carried it away from the store and back to their hotel room, and had the intent to permanently deprive Dante.

Thus, Nancy may be charged with theft by larceny.

Aiding and Abetting

Aiding and abetting is when an individual aids, encourages, or counsels the perpetrator before, during, or after the commission of the crime. It requires that the individual actually assist, which is beyond trivial assistance, with the specific intent that the crime be completed. It requires the showing of more than mere knowledge.

Here, Nancy was present at the scene of the crime. The two parties--Sandy and Nancy--could have been discussing what they were planning on doing. Sandy entered the tasting room first, and though more than mere presence at the scene of the crime, it may be assumed that Nancy provided the necessary encouragement, though the facts do not plainly state this. There is no knowledge that there was a complete agreement to commit the crime of theft.

Thus, Nancy will most likely not be found guilty of aiding and abetting.

Conspiracy to commit theft

Conspiracy is the agreement to commit a target crime that requires an overt act under California. It requires the showing of an intent to enter an agreement, an intent to commit the target crime, and an intent that one individual would commit the overt act. An overt act is a step beyond planning and preparation but below an attempt.

Here, as with Sandy, there was no clear indication of the crime either wished to commit. There was no intent to enter into an agreement, nor was there an intent to commit target crime. The facts do not plainly suggest enough for one to assume this.

Thus, Nancy will most likely not be able to assert conspiracy.

Voluntary Intoxication

Voluntary intoxication may be a defense to a specific intent crime.

Here, Nancy joined the tasting at a later time. Sandy had been tasting wine for a long period of time, and the facts do not suggest when Nancy began or when she ended. However, Nancy is an influencer who wears sundresses and wide brimmed hats and is encouraged to take pictures of oneself for products and free items. One can assume that Nancy is relatively small, and therefore, even one glass of wine may have a heavy influence. The facts do not clearly state how intoxicated either party was. Nancy may argue that she was so intoxicated as to not form the requisite intent to steal.

Thus, Nancy may assert voluntary intoxication.

Mistake of Fact

Mistake of fact may negate specific intent crimes whether reasonable or unreasonable. It may negate a general intent crime if reasonable.

Here, unlike Sandy, Nancy started drinking at a later time. Mistake of fact may occur from a great amount of ingested alcohol because of the severity of the intoxication and the blood alcohol level. Yet, the facts do not claim that this was the case for Nancy.

Thus, Nancy will most likely not be able to assert mistake of fact.

Conclusion

Nancy will most likely be found guilty of theft by larceny.

Very Good job
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3)

State v DanteCalifornia Homicide

An act or omission with a duty that results in the unlawful killing of another human being or fetus. It is murder when done with malice aforethought. Good

First Degree Murder

First degree murder occurs when an individual commits a killing done with either 1) intent to kill (express) with premeditation and deliberation or 2) felony murder.

Here, it does not seem likely that Dante had the necessary intent to kill with express malice which requires a showing of premeditation and deliberation. However, depending on the speed, Dante may be found to be guilty of felony murder, if the speed is found to be an inherently dangerous felony. However, within felony murder, there requires a showing of causal connection, or res gestae, Dante was still at the scene of the crime and the act had not ended. Yet, agency limitation applies, where defense may argue that it was actually not Dante himself, but the actions of the police officers as they performed the PIT maneuver that resulted in the death of the motorist.

Thus, Dante will most likely not be found guilty of first degree murder. *LOVE/Speeding are not enumerated felonies for FMR in CA21*

Under common law, there is not intent to kill or intent to inflict grievous bodily injury.

The felony of driving at a high speed does not fall under the enumerated felonies.

Thus, Dante will most likely not be found guilty of murder under common law.

Dante may be charged of murder in MPC being that there was an extreme recklessness killing with indifference. As stated above, he drove with the lights off on a busy road at a high rate of speed. This could easily be seen as being extremely indifferent, being that there are other people on the road that are flashing their lights at him. He also turned off his lights. He drove on the wrong side of the road, greatly risking the death of many, which would constitute an extreme reckless killing.

Thus, Dante may be charged with murder under MPC.

Second Degree murder

Second degree murder occurs when there is a killing done with 1) intent to kill express malice without premeditation and deliberation or 2) implied malice recklessness with a conscious disregard. ✓

Here, as stated above in first degree murder under common law, depending on if Dante knew if large amount of alcohol interacted with his schizophrenia or the possible medication that he took, there could be a showing for an implied recklessness with a conscious disregard. Assume facts Schizophrenics typically do not drive, Dante also consumed large amounts of alcohol. Dante proceeded to drink, get in his vehicle and start driving home. He then drove on the wrong side of the road.

Thus, Dante may be charged of an implied malice murder or second degree murder.

Under common law, Dante may be found guilty of an implied malice or depraved heart killing. Dante went to a party and was a diagnosed schizophrenic, which most likely would mean some form of medication. Dante then proceeds to consume large amounts of alcohol, which on its own could possibly warrant the possibility of the charge of murder, and paired with medication could potentially mean a fatal disaster. He turned off his lights on the wrong side of the road traveling at a high rate of speed. This is an inherently

dangerous activity that could reasonably cause the death of another. He evaded a high-speed car chase.

Thus, Dante may be charged with implied malice/depraved heart or intent to inflict grievous bodily injury under common law.

Voluntary Manslaughter

A killing done through adequate provocation or heat of passion and therefore mitigated.

Here, there are no facts to suggest a form of provocation. Sandy, Amanda, and Nancy do not appear in the fact pattern, and their thievery does not apply here.

Under common law, Dante would most likely not be charged with voluntary manslaughter.

Under MPC, Dante may be charged with a recklessness without extreme indifference murder. Dante got into the car, after a few hours of consuming large amount of alcohol and starts to drive home. At this point Dante is driving at the wrong side of the road, waving at people who are most likely flashing lights and trying to get his attention. Dante is also driving at a high rate of speed, and is highly reckless. He then leads the officers on a high-speed chase, and to evade, turns off his lights. This is a reckless act that could easily warrant the charge of manslaughter.

Thus, under MPC Dante may be charged with manslaughter.

Involuntary Manslaughter

A killing that is done in a criminally negligent manner or a felony that is not enumerated under felony murder or a misdemeanor.

Here, if Dante was completely unaware of the circumstances, this could be considered an involuntary manslaughter because it was criminally negligent to drive at such a high speed. If this high speed is not considered felony murder, the driving may also fall under involuntary manslaughter.

Under common law, the charge would be the same.

Thus, Dante may be charged of involuntary manslaughter.

Under MPC, a negligent homicide follows the same standards as involuntary manslaughter, and thus, Dante may be charged of negligent homicide.

Causation ✓

In order to be found guilty of the death of the motorist, there must be a showing of that defendant's acts were the actual cause and the proximate cause.

Actual (But For)

The actual cause is the but for cause.

Here, but for Dante's high speed chase, the cops would not have committed the PIT maneuver, and Dante's car would not have hit another motorist, *causing*

motorist to have a HA.
Thus, Dante is the actual cause.

Proximate Cause (Legal)

Proximate cause is the foreseeable cause, it also includes dependent intervening which connects the causal chain and independent intervening, which may break the causal chain. ✓

Here, it is foreseeable that someone may die from being struck by a car in a high-speed chase. The egg-shell victim must be taken into consideration, which states that you take the victim as they are. The collision was non-injury, but the motorist died because of a heart failure triggered by the accident. The causal connection has not been broken, and it is foreseeable that a victim in a car may be elderly or have health issues.

✓
Good

Thus, Dante is the proximate cause of the motorist's death.

Conclusion

Dante will most likely be charged with manslaughter, second degree murder, or involuntary manslaughter.

Battery

Battery

Defendant is guilty of assault if he commit an unlawful application of force upon victim causing bodily injury or offensive contact.

Here, once the chase had ended, Dante got out of the vehicle, runs at the officer and starts slapping him and screaming. This is battery as it caused the unlawful application of force upon the victim, in this case the police officer, and resulted in offensive contact.

Thus, Dante may be charged with battery.

Assault

Defendant is guilty of assault if he places the victim of apprehension of imminent harmful or injurious contact. It is aggravated assault when done with a deadly weapon.

Here, Dante was driving at a high speed on the highway on the wrong side of the road, several motorists saw Dante doing this and attempted to flag him down to get his

attention. Dante was driving at a high speed, and even waving at people. The many people that witnessed this were most likely in great apprehension of harmful contact, and being that the car was moving at such a fatal speed, even aggravated assault.

Thus, Dante may be charged with assault.

Creative Defenses

Voluntary Intoxication ✓

Voluntary intoxication is a defense to specific intent crimes.

Here, voluntary intoxication may be a defense to a specific intent crime, however, Dante will most likely be found guilty of a reckless killing and voluntary intoxication is not a defense in these situations. Furthermore, voluntary intoxication is not a defense to assault nor battery, as these are general intent crimes.

Therefore, Dante will most likely not be able to assert voluntary intoxication as a defense.

Defense of Self ✓

Defendant may use reasonable means of self-defense, including deadly force if faced with imminent and reasonable deadly force or great bodily injury, as long as the force used was proportional, the harm was imminent, and defendant was not the aggressor. Defendant may use reasonable means of self-defense against a police officer if they are making an unlawful arrest. Defendant may not use deadly force. ✓

Here, the arrest was not unlawful, and therefore Dante can not claim self defense against an illegal arrest. However, being in his shoes, if he reasonably believed that there was imminent harm coming from this officer, he believes that he must use force to prevent the officer from hurting him and that the officer would not leave him alone. Dante did

not use more force than was necessary. He did not use deadly force, instead he used proportional self-defense by slapping the officer. *Good*

Insanity

Diminished Capacity

At the time the crime was committed defendant suffered from a disease or a defect and was thus not able to form the specific intent of the crime.

Here, Dante was a diagnosed schizophrenic, a disease of the mind at the time the act was committed, and therefore was not able to even form the intent for battery or assault, though he still may be found guilty of reckless killings. ✓

Thus, Dante may assert the diminished capacity defense.

Affirmative defense of insanity

in California is relatively the same to Common Law M'Naughten test, which both state that D suffered from a disease of the mind, or insanity, and because of such was either 1) unable to understand the nature or quality of his actions or 2) unable to understand how the act was legally or morally wrong. Under MPC the defense of insanity states that because of a mental disease defendant was unable to 1) understand the criminality or wrongfulness of his actions or 2) fail to conform his acts to the dictates of the law. ✓

In all three jurisdictions, Dante was a diagnosed schizophrenic, and therefore had documented and substantiated evidence that he suffered from this at the time he committed the crime. Dante claims to see people after him, and that he must find any way to escape. It may be argued that he was unable to understand the nature of his act, being that he was in fear of his life, nor was he able to understand how this was legally or

morally wrong, being that he hit a officer of the peace, and did not attempt to run to them for help. However, he also consumed a large amount of alcohol.

✓ Good

Thus, Dante will most likely be able to assert insanity.

Durham Test

Used in New Hampshire, defendant at the time the crime was committed defendant suffered from a mental disease and but for that mental disease would not have committed the crime.

Here, Dante suffered from schizophrenia, and if he had not suffered from this, may not have driven so recklessly, however as stated above, he did consume a large amount of alcohol, so it may be argued that he was driving the wrong way at a high speed because of his high level of intoxication.

Therefore, Dante may fail in asserting the Durham test.

Duress

Defendant actually and reasonably believed in the following: 1) defendant or other was in fear of gbi/menace/ or deadly force unless they committed the crime and 2) the threat was imminent.

Here, Dante may argue duress and that he was in fear because of these voices that some form of gbi or deadly force was going to occur, however, this belief must be actual and reasonable. Dante may argue that this was a reasonable defense for himself, being in his shoes, but the threat was not actual, instead it was a self-perpetuated threat or one created by his mental disease. *Not Applicable*

Thus, Dante may fail in asserting the defense of duress.

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Necessity

Defendant actually and reasonably believed in imminent fear of serious bodily injury, there was no legal alternative, a reasonable person would have acted the same in similar circumstances, defendant did not contribute to the harm.

Here, Dante did contribute to the harm being that he was drunk. There were legal alternatives, which include not driving. It is also difficult to argue how another schizophrenic would have acted in similar circumstances, but one can assume that they would not be driving and may simply run from their demons.

Thus, Dante may fail in asserting necessity.

Mistake of Fact?

END OF EXAM

Good Job 80