

MONTEREY COLLEGE OF LAW
MIDTERM EXAMINATION
FALL 2018

CRIMINAL LAW

Professors Brannon and LaBerge

Instructions

1. This examination consists of three sections of equal value. There is a three (3) hour time limit to complete the exam.
2. First there are two essay questions. Make sure that you read each essay question carefully before answering. Attempt to organize your answer before you start writing.
3. The essay questions test your ability to apply the law to the facts. Use IRAC. After stating the issue, provide a succinct statement of the relevant legal principles, followed by a detailed analysis of how these legal principles apply to the facts, and a conclusion.
4. There are multiple issues to address in the essay questions. Some issues may be fairly straightforward and do not require detailed analysis. Other issues are more complicated; those issues merit more extended discussion.
5. The final section consists of 30 multiple choice questions. Circle the letter corresponding to the correct answer. Please write your ID number (not your name) and your professor's name on page 1. **NOT AVAILABLE**
6. Bluebook Users/Essays -- Please write your ID number (not your name) on the cover of each of your bluebooks. Write your professor's name. Number your bluebooks. Return every page of this examination along with your bluebooks. Write on only one side of each bluebook page. Your answer must be double-spaced. Make sure your answer is legible. You will get no credit for words or sentences that we cannot read.
7. Computer Users/Essays -- Please type your ID number (not your name) at the beginning and end of your essay. Also type the name of your professor at the beginning. Return every page of this examination along with your answer.
8. This exam has nineteen (19) pages including this instruction sheet.

Question 1

Don decides to steal to support his drug habit. Don entered a residence at night. The homeowner heard a sound, awoke, and fearing for his life, confronted Don with a loaded handgun. Don knocked the homeowner down, disarmed him, and forced the homeowner into Don's vehicle. It was snowing hard, visibility was poor, and the temperature was near zero. To facilitate his escape, Don left the homeowner in a secluded area without his shoes or jacket. Don told homeowner sincerely, "I hope you make it out of here alright." About an hour later, after Don was back in his apartment, a truck driver travelling at the speed limit saw a man in the middle of the road with his hands up in the air. The driver said he "didn't have time to react" before his truck struck homeowner, killing him. Investigation revealed the truck driver did not swerve and there were no skid marks prior to the point of impact. The truck driver's blood alcohol level was twice the legal limit. Police arrested Don because they recognized him on the homeowner's video surveillance system. Don explained to his attorney that he acted in self-defense because the homeowner came at him with a gun.

What type(s) of homicide(s) could the DA argue Don committed? Do not discuss involuntary manslaughter. What should Don's attorney argue in response? What should a jury decide?

Question 2

Sally fell in love with Harry, a prison parolee who had been convicted of violent crimes. While both were extremely intoxicated after a night of heavy drinking, they decided to rob a bank to finance a vacation to Belize. Sally made a makeshift mask for Harry to wear during the robbery and gave him her gun to display during the robbery, but she told Harry not to use the gun or hurt anyone. Harry said nothing, took the gun, racked a round into the chamber in Sally's presence, staggered to his car, and drove to the bank. After parking in the bank lot and putting on his mask, Harry concealed the gun and walked toward the bank entrance. A security officer in the parking lot ordered Harry to "stop and freeze." Harry jumped in his car and sped back towards home. Sally, sobering and remorseful, then called the police to confess and identified Harry and the car he was driving. The police, based on her tip, observed Harry's car and gave chase. Harry fired his gun at the police so they would stop chasing him, and the bullet hit a patrol car's windshield made of bullet proof glass harming no one, before Harry crashed his car and police apprehended him.

What crimes could the DA argue Sally committed? Do not discuss aiding and abetting. What should Sally's attorney argue in response? What should a jury decide?

2)

Student ID: 228954

Conspiracy to commit a Robbery

A conspiracy is an agreement between two or more people to commit a crime (or crimes). The punishment for a co-conspirator is the same as the perpetrator of the crime.

Actus Reus

The Actus Reus required for a conspiracy is at least one person commits a subsequent overt act.

Harry drove to the bank, put on his mask, concealed the gun, and walked towards the bank entrance. This was after they made the agreement to commit the robbery (the conspiracy to commit the robbery) took place so it satisfies the actus reus requirement.

Mens Rea

The defendant must have intended to make an agreement to commit a crime and have the specific intent for at least one person to make an subsequent overt act.

Sally and Harry decided to rob a bank to finance a vacation to Belize (intended to make an agreement to commit a robbery). Sally made a mask for Harry and gave him her gun and said nothing to him when he racked a round into the chamber, staggered to his car, and drove away to the bank. These facts show that Sally intended for harry to commit the robbery.

Involuntary Intoxication

Sally's attorney will argue the defense of voluntary intoxication. They will argue that it mitigated the necessary mens rea and Sally couldn't have intended to enter into the agreement or intended for Harry to commit the Robbery. The burden of proof is on the prosecution to prove that Sally did have the necessary mens rea. The DA will argue that Sally made a mask for Harry and gave her gun to him. If Sally did not intend to make the agreement or intend for Harry to commit the Robbery then why did she do those actions? Also, Sally told Harry not to use the gun or hurt anyone which proves she intended for Harry to commit or at least attempt to commit the robbery since she wouldn't have said that to Harry otherwise. Also, Sally later called the police to confess which proves she had the necessary mens rea.

Withdrawal

Sally's attorney will argue that she withdrew from the conspiracy because she called the police to confess and identified Harry and his car. However, in order to withdraw from a conspiracy the defendant must withdraw before the overt act which was not stated in the facts.

Conclusion

Sally is likely to be found guilty of conspiracy to commit a robbery.

Attempted Robbery

An attempt occurs when a crime would have been committed if an intervening factor did not occur.

Actus Reus

The defendant must have done a direct step beyond planning or preparation.

Harry drove to the bank, put on his mask, concealed the gun, and walked towards the bank entrance which is a direct step beyond planning or preparation.

Mens Rea

An attempt of any crime requires for the defendant to have the specific intent to cause the harmful result in the definition of the crime.

In this case, Harry attempted a robbery. A robbery is when the defendant takes property owned by someone else, the property was in the possession of the other, the defendant took the property from their possession or their immediate presence, the defendant took the property against the person's will, the defendant used force or fear to gain possession of the property or to keep the person from resisting, and the defendant had the intention to permanently deprive the owner of the property or temporarily deprive the owner of a major portion of its value or enjoyment of it.

Harry intended to use force or fear (by displaying or using the gun) to gain possession of the money. Harry had the specific intent to cause the harmful result in the definition of a robbery.

Conclusion

Harry would have committed a robbery if the security guard did not intervene. Harry did a direct step beyond planning or preparation and had the specific intent to cause the harmful result in the definition of the crime. Harry is likely to be convicted of an attempted robbery. Since Sally was a co-conspirator to the attempted robbery she is also likely to be found guilty. *AMZ?*

Attempted 2nd Degree Murder

An attempt occurs when a crime would have been committed if an intervening factor did not occur.

Actus Reus

The defendant must have done a direct step beyond planning or preparation. Harry fired his gun at the police which is a direct step in the attempted murder.

Mens Rea

An attempt of any crime requires for the defendant to have the specific intent to cause the harmful result in the definition of the crime.

2nd degree murder requires the intent to kill but without premeditation and deliberation. Harry would need to have the specific intent to kill the police officer. Harry fired his gun at the police so they would stop chasing him which proves he had the intent to kill since a reasonable person would know that firing a loaded firearm at someone is likely to cause death. Factual impossibility is not a defense since the defendant only needs the apparent ability to kill, so the fact that the car's windshield was made of bullet proof glass is not a valid argument for the defense.

Vicariously Culpable

For a co-conspirator to be vicariously culpable for substantive crimes the crimes must have been done to further the conspiracy or were a natural and probable consequence of the design of the conspiracy.

Sally's attorney will argue that Sally is not vicariously culpable for the substantive crime because she told him not to use the gun or hurt anyone. However, the attempted 2nd degree murder was a natural and probable consequence since Sally gave Harry her gun

knowing that he had been convicted of violent crimes in the past. Also, he racked a round into the chamber in Sally's presence which could show that he intended to use the gun and it was foreseeable that he would use the gun.

Withdrawal

Sally's attorney will argue that Sally withdrew from the conspiracy before the substantive crimes and did everything reasonable to prevent the crime (by calling the police and identifying Harry and his car) so she is not culpable. However, she did not withdraw before the overt act and she did not tell Harry that she was no longer participating.

Conclusion

Sally is likely to be found guilty of attempted 2nd degree murder since it was a natural and probable consequence of the design of the conspiracy.

Assault

An assault is when:

- The defendant did an act that by its nature would directly and probably result in the application of force to another person
- The defendant acted willfully
- a reasonable person would know that the act by its nature would directly and probably result in the application of force to another person
- the defendant had the present ability to apply force
- the defendant was not acting in self defense or defense of others

By firing a loaded gun at the police, Harry did a willful act that by its nature would directly and probably result in the application of force to another person and he had the present ability to apply force.

Withdrawal

Sally's attorney will argue that Sally withdrew from the conspiracy before the substantive crimes and did everything reasonable to prevent the crime (by calling the police and identifying Harry and his car) so she is not culpable. However, she did not withdraw before the overt act and she did not tell Harry that she was no longer participating.

Conclusion

Harry is likely to be convicted of assault and Sally will be vicariously culpable.

Conclusion

The DA should argue that Sally committed Conspiracy to commit a robbery and attempted robbery. If they determine that her withdrawals were invalid then they should argue that she committed attempted 2nd degree murder and assault since she would be vicariously culpable for the substantive crimes as well.

Jury Decision

The jury should find Sally guilty of conspiracy to commit a robbery and attempted robbery.

END OF EXAM

QUESTION 2 ANSWER OUTLINE¹

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

No credit = ∅

+ **+++Issue 1: Did Sally commit the crime of conspiracy to commit robbery, burglary, and larceny?**

Rules: ++1. Conspiracy is an agreement between two or more persons to commit a *crime or crimes*. A conspiracy includes the definition of at least one target crime. Actus reus requires at least one subsequent **overt act** by one co-conspirator. An overt act is less than a direct step (the actus reus for an attempt) but is more than agreeing and planning.

+2. Generally, one agreement to commit multiple offenses = one conspiracy, except for conspiracy to murder multiple victims.

+3. Robbery: D takes property from another's possession or immediate presence using force or fear and against the V's will.

+4. Burglary: D enters a building with the intent to commit a felony or any theft.

+5. Larceny: Trespassory taking of another's property with the intent to deprive the owner of the property.

++Analysis and conclusion: Sally agreed to commit an armed robbery (and necessarily a larceny and burglary, since Harry would need to enter the bank to rob it) by assisting Harry, followed by many overt acts such as making a mask, providing Harry with a gun, Harry then drove to the bank, etc. Sally gave Harry a gun and a mask, so she obviously intended he use force or fear, even if she didn't want Harry to "use" the gun. Sally conspired to commit robbery and all associated crimes.

+ **+++Issue 2: Is Sally culpable for Harry's substantive target crimes of attempted bank robbery, attempted burglary and attempted larceny?**

Rules: +1. Conspiracy: A co-conspirator is automatically guilty of the conspiracy's target crime committed by co-conspirator.

++2. Attempt: 1) Beyond planning and preparation; 2) A direct but ineffective step which puts plan into action so that the plan would have been completed if some circumstance outside the plan had not interrupted the attempt. A direct step indicates a definite and unambiguous intent to commit the crime.

¹ This outline is not a model answer because it often does not include model analysis (applying the law to the facts and analyzing; **instead, the outline often identifies the facts to analyze**) and may not offer a conclusion. The outline is designed to assist professors in grading exams and as a key for students to identify issues and the applicable law. See best student answer for examples of analysis and conclusions. Also, it is not possible due to time constraints to obtain all credit available. Better answers address major issues thoroughly where more points are available. Points may be deducted if an answer addresses minor issues without spotting central issues.

++Analysis: Harry committed an attempted bank robbery, burglary and larceny. Harry drove to the bank parking lot armed, put on his mask, got out of his car and started toward the bank entrance. The security guard interrupted the plan. Sally is automatically guilty of these crimes because they were target crimes of the conspiracy.

+Issue 3: Is Sally vicariously culpable for Harry's resulting crime of attempted murder on a conspiracy theory?

Rules: +1. Attempted murder requires the intent to kill (express malice). There is no such crime as attempted CDHL murder, since it is a logical impossibility to try to commit an unintentional killing.

++2. Conspiracy—Resulting crimes: D is vicariously culpable for substantive crimes that are non-target resulting crimes committed by a co-conspirator if in furtherance of conspiracy and foreseeable, even if D neither intends nor knows of co-conspirator's commission of crime.

+3. Factual impossibility is not a defense: It is irrelevant that the windshield was made of bullet proof glass, as long as Harry had the specific intent to kill.

+4. The facts do not implicate attempted voluntary manslaughter (ISD or HOP) because the police had a lawful right to chase Harry.

++++Analysis and conclusion: 1. Facts to analyze for whether Harry committed an attempted murder by firing his gun at police: The police observed Harry's car and gave chase. Harry fired his gun at the police so they would stop chasing him. 2. Facts to analyze for whether any attempted murder Harry committed was foreseeable and in furtherance of conspiracy: Harry had been to prison for violent crimes convictions. Sally conspired with Harry to commit an armed robbery using her gun, which Sally knew was loaded. Sally told Harry not to use the gun or hurt anyone. Harry said nothing, took the gun, racked a round into the chamber in Sally's presence.

+Issue 4: Is Sally culpable for Harry's resulting crime of assault on police?

+++Rule: Assault—An act that would probably result in the application of physical force + D is aware of facts + facts would lead a reasonable person to realize that act was likely to result in the application of physical force by D. Assault lies "even though at the time of the assault the V is so situated as to have an impervious defense."

++Analysis and conclusion: Harry clearly committed an assault on the police by firing his gun at them. Facts to analyze for whether Harry's assault was foreseeable and in furtherance of conspiracy are the same as under issue 3, except the general intent required for assault is more foreseeable than the specific intent to kill (credit for overlapping foreseeability analysis will be awarded only once).

+ **Issue 5: Did Sally withdraw from the conspiracy?**

+++**Rule:** Withdrawal from **conspiracy** must occur before overt act to avoid culpability for conspiracy.

To avoid culpability for **substantive** crime committed by a co-conspirator, withdrawal must occur before commission of substantive (target or resulting) crime. D must affirmatively reject conspiracy and communicate rejection by word or deed to other members of the conspiracy known to D.

+++**Analysis:** Sally communicated her withdrawal to police before Harry fired upon the police, but according to the facts after Harry's attempted bank robbery. Therefore, Sally may have withdrawn in time to avoid culpability for Harry's attempted murder or assault, but not Harry's attempted robbery or her conspiracy to rob. Technically Sally must communicate with Harry, but these facts argue strongly for withdrawal, since Sally called the police. She did everything she could to withdraw under these facts, assuming she could not communicate with Harry.

+ **Issue 6: Defense of voluntary intoxication**

++**Rule:** Voluntary intoxication may negate a specific intent, if D was too intoxicated to form the specific intent required for the crime. Voluntary intoxication cannot negate a general intent.

++++**Analysis and conclusion:** If Sally was too drunk to form the intent to agree to rob a bank (not evident on these facts), she is not guilty of conspiracy and therefore is not guilty of any of Harry's resulting crimes. If Harry was too drunk to form the intent to rob (not evident on these facts), then Sally is not guilty of Harry's substantive crime of attempted robbery. If Harry was too drunk to form the intent to kill, then Sally is not guilty of Harry's resulting crime of attempted murder. Voluntary intoxication is not a defense to assault (a general intent crime), so since Harry is guilty of that crime, Sally is guilty of that crime also.

1)

ID: 221236

Professors Brannon and LaBerge

Is Don guilty for the death of the homeowner under a first degree, felony murder, theory?

First degree felony murder is a killing of another human, whether accidental or unintentional, committed during the commission or attempted commission of an enumerated felony such as arson, burglary, and robbery, among others. The mens rea for the killing is established through the specific intent to commit the enumerated felony. The commission of the crime extends even after the defendant reaches a place of temporary safety. In California, the agency limitation rule is an exception to felony murder, where if someone other than the perpetrator or their accomplice commits the killing, the defendant is not guilty of felony murder.

Here, Don committed a burglary when he entered a residence with the intent to commit larceny (to support his drug habit). During his attempt to find something of value, he awoke the homeowner who confronted Don with a loaded handgun. Don disarmed the homeowner and forced him into his vehicle and drove him to a secluded area where he abandoned him without his shoes or jacket; it was snowing and the temperature was near zero. Don successfully escaped and made it home to his apartment. About an hour later, the homeowner was struck and killed by a passing truck. It is unlikely the state will argue a felony murder theory in order to convict Don of the death of the homeowner. In a state without the agency limitation rule, the killing of the homeowner may have been

linked to Don because although the death occurred after the enumerated felony (burglary), the commission of the crime extends to when the defendant reaches a place of temporary safety. However, in CA, the defense will argue that because the perpetrator, Don, did not commit the killing himself, whether accidental or unintentionally, he cannot be found guilty of felony murder.

It is unlikely the court will find Don culpable of the death of the homeowner under a first degree felony murder theory.

Is Don guilty for the death of the homeowner under a second degree, implied malice murder, theory?

Second degree, implied malice murder, based on a conscious disregard for human life occurs when the defendant commits an intentional act and the natural and probable consequence of that act is dangerous to human life. When the defendant commits the act they are aware it is dangerous to human life and deliberately commit the act with a conscious disregard for human life.

Here, Don entered a residence in order to find something of value to support his drug habit. While in the residence, he awoke the homeowner who confronted Don with a loaded handgun. Don disarmed the homeowner and forced him into his vehicle and drove him to a secluded area. To facilitate his escape, Don abandoned the homeowner without his shoes or jacket; it was snowing and the temperature was near zero. The homeowner was later killed by a passing truck in an attempt to signal for help. Don intentionally left the homeowner behind in freezing temperature and it was certainly a natural and probable consequence that his act was dangerous to the homeowner's life. Don was aware of how dangerous a situation he had placed the homeowner in. In fact, he

expressed that he hoped "...you make it out of here alright." Despite knowing the dangerous situation the homeowner was put in, Don deliberately drove away. His actions show a conscious disregard for human life. It is likely that the state will argue to convict Don for the death of the homeowner under an implied malice theory. The defense will likely argue that Don acted in self-defense because the homeowner had pulled a gun on him (see self-defense argument below).

If the court does not find that Don acted in perfect self-defense, it is likely that they will find Don committed a second degree implied malice murder.

Is Don guilty for the death of the homeowner under a voluntary manslaughter, CDHL, HOP, theory?

Voluntary manslaughter is a killing based on a conscious disregard for human life (see rule for CDHL above) that is mitigated by a heat of passion. A heat of passion occurs when there is sufficient legal provocation to induce a person of average disposition to react with passion, without judgment or reflection. For the crime to be mitigated by a heat of passion claim, defendant can not be the provocateur or initial aggressor. If a "cooling off period" is found, a heat of passion claim is invalid.

Here, Don entered a residence without consent and was confronted by a homeowner with a loaded handgun. Although being confronted with a handgun may constitute legally sufficient provocation, it is unlikely that the defense will attempt to achieve a reduction to manslaughter under this theory. Don had committed a burglary and was attempting to commit a larceny when he was confronted by the homeowner. Because Don caused the provocation he cannot then claim he acted under a heat of passion.

It is unlikely that the court will find that Don acted in a heat of passion.

Is Don guilty for the death of the homeowner under a voluntary manslaughter, CDHL, ISD, theory?

Voluntary manslaughter is a killing based on a conscious disregard for human life (see rule for CDHL above) that is mitigated by an imperfect self-defense claim. Imperfect self-defense occurs when the defendant had an actual but unreasonable belief in the need for self-defense. Defendant believed they were in imminent danger of death or great bodily injury and the immediate use of force was necessary. The force used must be proportional. Future threats of harm of insufficient to establish an imperfect self-defense claim.

Here, Don entered a residence without consent. He was confronted by a homeowner with a loaded handgun. The defense may argue that when he was confronted with the gun, Don had a right to self-defense (see perfect self-defense argument below). If the court finds that Don's belief was unreasonable, then the defense will likely argue an imperfect self-defense theory because Don had an actual/subjective, imminent fear of death of great bodily injury. There is no indication that Don was armed and since the homeowner was, Don believed his use of force was immediate and necessary to prevent harm to himself. However, the state will argue that when the homeowner heard a sound and awoke, he knew someone was in his home and feared for his life. The homeowner had the right to self-defense of habitation which allowed him to use deadly force against Don because he believed the intruder was a threat to him. It is more likely that the defense will attempt a perfect self-defense claim.

If the court finds that Don's beliefs were unreasonable then they may find that he acted in imperfect self-defense.

Was Don the actual and proximate cause of Don's death?

Defendant must be the actual and proximate cause of the death to be found culpable. Actual cause is an act without which the harmful result would not have occurred; it is also referred to as "but for" cause or cause-in-fact. The defendant is the proximate or legal cause if it is objectively foreseeable that their actions would result in harm to another.

Actual - But for Don entering the residence of the homeowner without consent, the homeowner would not have ended up in a secluded area in freezing temperatures which led to him being run over by a truck. The court will likely find that Don was the actual or "but for" cause of Don's death.

Proximate - It was objectively foreseeable that harm would come to the homeowner when Don abandoned him in a secluded area in freezing temperatures. A court would find that this would make Don the proximate cause of the death of the homeowner. However, it was unforeseen that an intoxicated truck driver would pass by as the homeowner was signaling for help. This is a dependent intervening act that occurred as a result of Don's actions. Had Don not abandoned the homeowner there, he would not have been in peril or have had the need to waive down a passing vehicle. It is unexpected but not unforeseeable that a driver was intoxicated while driving. Therefore, this does not break causation and Don is still the proximate cause of the death of Don.

It is likely the court will find that Don was the actual and proximate cause of the death of the homeowner.

Did Don act in perfect self-defense when he abandoned the homeowner in a secluded area in freezing temperature?

Defendant acts in self-defense if they have a reasonable belief in the need for self-defense. Defendant believes they were in imminent fear of danger or death and the immediate use of force is necessary. Defendant cannot be the initial aggressor and must only use proportional force. Threats of future harm are insufficient.

Here, Don entered a residence without consent and was confronted by a homeowner with a loaded handgun. Don stated that he acted in self-defense because he was faced with the handgun. There is no indication that Don was armed so his belief in the need for self-defense may be reasonable. However, the state will likely argue that it was appropriate for Don to knock down and disarm the homeowner but not to drive him to a secluded area and abandon him in freezing temperatures. At that point, Don was no longer in fear of his life and did not have the right to put the homeowner in a deadly situation.

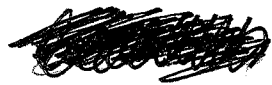
It is unlikely the court will find that Don acted in perfect self-defense and that the death of the homeowner was justified.

Conclusion

A jury may decide that Don is guilty of the murder of the homeowner under a second degree, implied malice, theory and that Don's claim of self-defense was invalid.

ID: 221236

END OF EXAM



QUESTION 1 ANSWER OUTLINE¹

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

No credit = ∅

This question obviously involves an unintentional killing (To facilitate his escape, Don stranded homeowner, telling him sincerely, "I hope you make it out of here alright"). Given the call of the question, the only homicide possibilities are felony murder, implied malice second degree murder, and implied malice voluntary manslaughter. D also thinks he acted in self-defense.

++ ++Issue 1: Did Don commit felony murder?

+++ **+++Rule: Felony murder:** A killing, even if unintentional or accidental, committed in perpetration or attempted perpetration of: Burglary (we did not study kidnapping, so that crime does not exist for purposes of an exam).

- a) Requires specific intent to commit enumerated felony.
- b) Actus reus: Commission of felony extends to when *D reaches place of temporary safety*.
- c) **Agency limitation:** However, it is **not** felony murder if an **actor** other than a perpetrator in the felony (for example a victim or police officer) **commits the fatal act**. Here a **non co-felon actor** is the last human cause of the V's death, usually by an act of force or violence.

++ **++Analysis and conclusion:** Don did not commit felony murder. Although Don committed a burglary, because he was back in his apartment—a place of temporary safety—when the fatal act occurred, Don's commission of the burglary was complete. Also, because Don did not commit the fatal act—the truck driver did—Don cannot be culpable for homeowner's death on a felony murder theory because of the agency limitation.

½ ½Issue 2: Did Don commit a burglary?

+ **+Rule:** A burglary occurs when D enters a building with the with the intent to commit a felony or any theft.

½ **½Analysis and conclusion:** The facts state that Don decided to steal and entered a residence. Don therefore committed a burglary.

++ ++Issue 3: Did Don have the mens rea for implied malice second degree murder?

++ **++Rule: Implied Malice:**

- a) Natural and probable consequence of act dangerous to human life (it was foreseeable a person could die); and

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Dependent intervening cause: A cause of the harm that occurs in response to the defendant's act. Dependent intervening causes do not usually break the causal chain.

Independent intervening cause: A cause independent of the defendant's act that would have occurred in the absence of the defendant's conduct; that is, the defendant's conduct did not cause the subsequent independent intervening act.

Intended Consequences Doctrine: If the defendant intended the harmful result, and it occurred *by means set in motion by the defendant*, even an unforeseeable intervening cause will not break the causal chain.

Free, Deliberate, Informed Human Intervention: When an act by someone other than the defendant is the primary cause of the harm, this favors a break in the causal chain relieving the defendant of culpability.

+++
+++
+++Analysis and conclusion: Facts to analyze: Don forced the homeowner into Don's vehicle. It was snowing hard, visibility was poor, and the temperature was near zero. To facilitate his escape, Don left the homeowner in a secluded area without his shoes or jacket. A truck driver travelling at the speed limit saw a man in the middle of the road with his hands up in the air. The driver said he "didn't have time to react" before his truck struck homeowner, killing him. Investigation revealed the truck driver did not swerve and there were no skid marks prior to the point of impact. The truck driver's blood alcohol level was twice the legal limit.

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+Issue 7: Did Don act in perfect self-defense?

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++Rule: Self-Defense: D may use deadly force in response to deadly/GBI force when D has a reasonable belief there was is imminent danger of GBI/death (belief in future harm is not sufficient, no matter how great or likely the harm); and deadly force is necessary; and D is not an aggressor. Self-defense is never available in response to a lawful use of force, such as reasonable force used by a person in defense of habitation or property.

1/2
++Analysis and conclusion: By committing a burglary, Don was the aggressor and because homeowner had a lawful right to use force in defense of his home at night, Don had no right of self-defense to disarm homeowner, to forcibly remove him from his home, or to strand him in a secluded area. Also, Don's stranding of homeowner was not done in response to any imminent danger of GBI; Don stranded homeowner to facilitate his escape.