

MONTEREY COLLEGE OF LAW  
MIDTERM EXAMINATION  
FALL 2019

**CRIMINAL LAW**

Professor N. Knight

Instructions

1. This examination consists of three sections of equal value. There is a three (3) hour time limit to complete the exam.
2. There are three 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. 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 may be more complicated; those issues merit more extended discussion.

Question 1 (60 Minutes)

Don, a drug addict, entered a residence at night, intending to steal to support his addiction. The homeowner heard a sound, awoke, and confronted Don with a loaded handgun. Don disarmed the homeowner and forced him into Don's vehicle. It was snowing hard, visibility was poor, and the temperature was near zero. 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." Don returned to his apartment. About an hour later, a truck driver travelling at the speed limit saw a man in the middle of the road waving his hands in the air. The driver said he "didn't have time to react" before his truck struck homeowner, killing him. 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.

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

Question 2 (60 Minutes)

Sally has been convicted of violent crimes and recently paroled out of state prison. Shortly after getting out of prison, Sally became extremely intoxicated and decided to rob a bank to finance a vacation to Belize. Sally obtained a semi-automatic handgun to display during the robbery, though she did not intend to use the gun or hurt anyone during the robbery. Sally then staggered to her car, and drove to the bank. Sally parked in the bank parking lot, put on her mask, concealed the gun, and walked toward the bank's entrance. A bank security officer in the parking lot ordered Sally to "stop and freeze." Sally jumped back in her car and sped back towards home, but the security officer got her license plate number. The police observed Sally's car and gave chase. Sally fired her gun at the police so they would stop chasing her, and the bullet hit a patrol car's windshield. The windshield was made of bulletproof glass and it stopped the bullet, harming no one. Sally then crashed her car and was arrested by the police.

What crimes will the DA charge Sally with? What are Sally's defenses? What should a jury decide?

Question 3 (60 Minutes)

Danny needed money to buy drugs. At around 2 AM on Maple street, he opened mailboxes belonging to the residences. In one he found a box of blank checks from Wells Fargo Bank mailed to the account holder who lived in one of the residences. Danny made a check out for \$1,000 and wrote his name in the payee line and signed the check using the name of the account holder. Danny then went to a Wells Fargo branch to cash the check. Danny provided the teller the check for \$1000 that he had obtained from the mailbox belonging to one of the residences on Maple Street.

Danny continued walking down the street and found himself in a neighborhood known for drug and theft crimes. One of the neighborhood drug dealers, Fred, saw the cash in Danny's hands. Fred approached Danny, threatened to kill him and demanded that Danny hand over the cash. Danny, in fear for his life, handed Fred the money. Fred then ran away on foot.

Discuss the crimes that Danny committed and any applicable defenses. Discuss the crime(s) that Fred committed and any applicable defenses.

90 Minutes

## QUESTION 1 ANSWER OUTLINE

### INSTRUCTOR USE ONLY – DO NOT PROVIDE TO STUDENTS, PLEASE

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.

#### Issue 2: Did Don commit a burglary, an enumerated crime for felony murder?

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

**Analysis 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

b) D purposely acted knowing the danger to, and with conscious disregard for, human life.

**Analysis and conclusion:** Don's act (actus reus) for implied malice second degree murder was taking homeowner against his will and transporting him to a secluded area where Don stranded him. Facts to analyze for CDHL: After committing a night time residential burglary, a very dangerous crime, 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. Don told homeowner sincerely, "I hope you make it out of here alright."

**Issue 4: Is Don's killing mitigated to imperfect self-defense voluntary manslaughter?**

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

- a) D actually believed self or another was in **imminent** danger of death or GBI; and
- b) D actually believed **immediate** use of deadly force was necessary
- c) Limitation: Imperfect and perfect self-defense are unavailable in response to a victim's lawful use of force

**Analysis and conclusion:** When Don took homeowner against his will and transported him to a secluded area where Don stranded him (actus reus), it is unlikely Don actually believed Don was in imminent danger of GBI, because clearly Don was in no such actual danger. The facts state Don stranded the homeowner to facilitate his escape. Also, Don's actus reus was in response to homeowner's lawful use of force, so Don did not act in ISD.

**Issue 5: Is Don's killing mitigated to heat of passion voluntary manslaughter?**

**Rule:** Sudden quarrel or heat of passion:

- a) D must act rashly under the influence of intense emotion that obscures reasoning or judgment. This is the subjective element. The following are all required objective elements:
- b) Requires sufficient **provocation by V** or conduct D **reasonably** believes V engaged in (mistake of fact must be reasonable).
- c) The claim of provocation cannot be based on events for which D is culpably responsible. D may not provoke a fight, become the aggressor, and, without first seeking to withdraw from the conflict, kill an adversary.

**Analysis and conclusion:** In the unlikely event Don subjectively acted rashly (his transportation of homeowner against his will and leaving him in a secluded area was calculated to facilitate Don's escape), Don, in committing a burglary, was responsible for any claimed provocation by homeowner who confronted Don with a loaded handgun. Therefore, Don did not act in a HOP.

**Issue 6: Did Don cause homeowner's death (required for any form of homicide)?**

**Rule:** The defendant's act must be a but for cause and a substantial factor in causing a foreseeable result for the defendant to be a legal cause. Was the resulting harm **highly extraordinary** under the circumstances? If so, this favors relieving the defendant of culpability.



**Intervening Causes:** Where there are multiple causes of the harmful result, intervening causes which occur after the defendant's act will sometimes relieve the defendant of responsibility for the harmful result.

**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. Don told homeowner sincerely, "I hope you make it out of here alright." 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.

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

**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.

**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.

## QUESTION 2 ANSWER OUTLINE

### INSTRUCTOR USE ONLY – DO NOT PROVIDE TO STUDENTS, PLEASE

**Issue 1: Did Sally commit the crimes of felon in possession of a firearm, robbery, burglary, and attempted larceny?**

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

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

Attempted Larceny: Direct step toward trespassory taking of another's property with the intent to deprive the owner of the property.

Felon in possession: D received a firearm and D knew he/she received a firearm and D was previously convicted of a felony.

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.

Analysis and conclusion: Sally attempted to commit an armed robbery (and necessarily a larceny and burglary, by taking direct steps such as obtaining a gun, driving to the bank, etc. Sally obviously intended to use force or fear, even if she didn't want to "use" the gun. Since Sally was a convicted felon, she was also in unlawful possession of a firearm.

**Issue 2: Is Sally liable for resulting crime of attempted murder?**

**Rules:** 1. Attempted murder requires the intent to kill (express malice). Must prove that the defendant took a direct but ineffective step toward killing another human being and the defendant intended to kill that person. If done with premeditation and deliberation, an attempted killing exposes the perpetrator to lifetime imprisonment. The length of time the person spends considering whether to kill does not alone determine whether the attempted killing is deliberate and premeditated. The amount of time required for deliberation and premeditation may vary from person to person and according to the circumstances. A decision to kill made rashly, impulsively, or without careful consideration of the choice and its consequences is not deliberate and premeditated. On the other hand, a cold, calculated decision to kill can be reached quickly. The test is the extent of the reflection, not the length of time.

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



3. The facts do not implicate attempted voluntary manslaughter (in Self-Defense or Heat of Passion ) because the police had a lawful right to chase Sally.

**Analysis and conclusion:** 1. Facts to analyze for whether Sally committed an attempted murder by firing her gun at police: The police observed Sally's car and gave chase. Sally fired her gun at the police so they would stop chasing her. Sally intended to kill the officers to stop the chase. Additionally, the killing was

**Issue 3: Is Sally culpable for the 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.

**Analysis and conclusion:** Sally clearly committed an assault on the police by firing her gun at them. She was aware of the fact that by firing a round, it was likely that there would be an application of physical force by her on the officers.

**Issue 4: 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 rob a bank (not evident on these facts), she is not guilty of any crime that requires a specific intent (burglary, robbery, attempted murder, larceny). She would still be liable for assault on the police officer, because voluntary intoxication is not a defense to assault (a general intent crime).

Answer and Issues outline:

1. Taking blank checks from a mailbox. This is larceny, not burglary, because a mailbox is not a building, room within a building, or a locked vehicle (there are other structures listed in PC 459, but students just need to know the places listed on CALCRIM 1700, unless we gave them the statute on an exam).

Students need not discuss other forms of theft that do not apply for this crime, because it is obvious they do not apply on these facts.

2. Forging the check: There is a California crime called forgery that we don't study, which best fits the bill here. However, the only way to apply this actus reus to the 4 types of theft would be to combine with attempt, so this could be an attempted larceny, assuming there is enough actus reus for an attempt. This is so if Danny intended to take the money from the account holder. But it is probably better as an attempted theft by false pretenses, if we regard the owner of the money/intended V as the bank, again assuming enough actus reus for an attempt. It is not an attempted larceny by trick because the V bank will intend to transfer ownership of the money. It is not an attempted larceny with the bank as V because the taking will not be trespassory.

3. Entering the bank with a forged check. This is a burglary because Danny entered a building with the intent to commit a form of theft.

4. Passing the forged check: Danny committed a theft by false pretences by passing the forged check at the teller's window. Danny took the cash by intentionally deceiving the teller by falsely representing himself as the account holder for both the check and the loan. Danny intended to acquire ownership of the money, so it is not a theft by trick. The theft was not trespassory, so it is not a larceny. Neither the bank nor the account holder entrusted Danny with the check or the proceeds so it is not embezzlement. As to the proceeds, embezzlement does not include consent due to fraud, deceit or falsehood.

5. Dennis's crimes: Dennis committed the crime of robbery. Robbery requires proof that Dennis take the property not his own; the property was in Danny's possession; the property was taken from Danny's immediate presence and against his will; and that Dennis used force or fear to take the property. Additionally, need to show that when Dennis used force or fear, he intended to deprive Danny of the property permanently. Here, Dennis sees the cash that Danny is carrying and arguably, forms the intent to steal the money from him. There is no evidence of Dennis returning the cash to Danny since Dennis flees the scene and does not return.

6. Battery: Dennis also committed battery against Danny. Battery requires proof that Dennis willfully touched Danny in a harmful or offensive manner and that Dennis did not act in self-defense. The punching on the head was willful and offensive and not done in self-defense.

7. Assault: Requires proof that Dennis committed an act that by its nature would directly and probably result in the application of force to a person (i.e. punching someone in the head); that Dennis did the act willfully (i.e. willingly or on purpose) and that Dennis was aware of the fact that would lead a reasonable person to realize that his act would directly and probably result in the application of force to someone. Also need to show that Dennis had the present ability to apply force and did not act in self-defense. All these elements are met here. The key point is that under CalCrims, there is no need to prove that Dennis actually touched Danny. The touching can be done indirectly by causing an object to touch the other person, which in this case is a bat.

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Issue: Did Don commit Felony Murder (FM)?

Rule: Felony Murder is the unlawful killing of another human being, intentionally or unintentionally, during the commission or attempted commission of a felony crime. FM is a specific intent crime and it is considered First Degree Murder. Listed also are the various thefts involved in Don's criminal conduct:

Larceny: is the trespassory taking of someone's possessions, with asportation, and with the intent of permanently depriving the owner of his possession. ✓

Burglary is the breaking and entering of another person's home (1st Degree Burglary), with the intent of committing a felony or theft. ✓

Robbery: is the taking of another's personal possession; taking personal possession in their immediate presence; against their will; using fear or force, with the intent of permanently depriving them of their possession. ✓

The Actus Reus for FM is the act of unlawfully killing another person

Mens Rea: is the intent enumerated in the felony (such as arson, larceny, burglary or robbery).

Here, Don broke into a homeowner's home, disarmed the homeowner, and forced him into his car and left him in a secluded area, where it was snowing hard, visibility was poor and temperatures were near zero. Don told the homeowner as he left, "I hope you <sup>make</sup> it out of here alright." Don returned to his apartment, and about an hour later a truck driver killed (intoxicated) killed the homeowner as he tried to flag it down.

Under the California Agency Limitation Rule, "felony murder" is only applicable to the person that commits the killing or murder. Thus, in California, Don could not be convicted for felony murder, because he was not the perpetrator. In another state, without the "Agency Limitation Rule" Don could be found guilty of felony murder.

Because of the California Agency Limitation Rule), Don, who had already reached a place of temporary safety, cannot be charged with Felony Murder, because the actual perpetrator was the truck driver. ✓ Yes!

Thus, the court will likely find Don, not guilty of felony murder.

Issue: Is Don guilty of attempted Burglary?

Rule: Attempted burglary is the act of breaking and entering into another person's house with the intent of attempting to steal or commit a felony. An attempt is more than a direct and ineffective step towards committing the crime. It is beyond planning and mere preparation.

Actus Reus: Don broke into the homeowner's house to steal. It was a voluntary act because he was looking for means to support his drug addiction.

Mens Rea: Don had the mental state to commit the crime, as he broke into the house and awoken the homeowner.

Here, Don breaks into the homeowner's, but without taking anything.

Thus, the courts will likely find Don guilty of attempted burglary. ✓

*What about intent to steal to support his drug habit?*



Issue: Is Don guilty of Second Degree Murder?

Rule: Second degree murder the unlawful killing of another person with malice (implied) in Don's case. It is implied because it was not premeditated or deliberate. Malice involves the conscious disregard for human life, particularly when the circumstances demonstrate a depraved heart, with malignant intent. ✓

Here, Don told the homeowner as he left him, "I hope you make it out alright". However, Don's actions speak louder than his words, because he left the homeowner in a dangerous and precarious situation where death was a highly probable factor. This is why Don said, "I hope you make it out..." However, by leaving him in a secluded area, under extremely harsh weather conditions (snowing and temperatures nearing zero), Don knew that the risk of death was incredibly high. ✓ *good analysis*

Here, the courts will have to determine if Don's actions against the homeowner warrant malice and depraved heart.

The courts will like take into consideration what the Actual and Proximate cause of the homeowners death was before coming to a verdict, which I will state in the preceding paragraphs.

Issue: Is Don the Actual or Proximate cause of the homeowner's death?

Rule: The Actual cause of death must be directly linked to the causal actions of the defendant.

Here, the homeowner's death can be directly linked to Don's breaking into his house, and being kidnapped, and left to survived under extremely precarious weather, without shoes, or jackets. But for Don's criminal actions, the homeowner would have been at home and not searching for survival under extreme weather conditions in a secluded area. Thus, the

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courts will find that Don is responsible for leaving the homeowner in this secluded area. The defense attorney will state it was not Don's intent to kill the homeowner, that is why he told the homeowner, "I hope you make it out alright." However, the DA will argue, Don's criminal action are directly linked to the homeowner's death. ✓

Proximate Cause: This is the "but for" element that requires the foreseeability of the homeowners death. It was foreseeable, that under those weather conditions, the homeowner might not survive. Moreover, the intent to leave the homeowner to survive under harsh winter conditions, lends itself to the real and foreseeable death of the owner. What was unexpected was the dependent intervening factor, where the truck driver, under the influence of alcohol, accidentally killed the homeowner. An independent intervening factor is a naturally occurring event that would have happened regardless, which has nothing to do with the defendant's actions. However, when Don left the homeowner in the secluded are, it would be normal for him to try and flag down a passing motorist; and it was foreseeable, because visibility was poor that a passing vehicle could not see the homeowner. ✓

Thus, the court will find that the proximate clause of the homeowner can be directly linked to Don's criminal conduct, burglary, leaving the homeowner in the secluded area the homeowner would be alive. Thus, "but for" Don leaving the homeowner in the secluded area, he would be alive in his home.

Issue: Is Don responsible for voluntary manslaughter?

Rule: Voluntary manslaughter is the unlawful killing of another person who under the heat of passion, commits a murder. Voluntary manslaughter is a mitigated second degree murder, because under the circumstances sufficient provocation, has been committed

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where a reasonable person, would have acted in a similar manner, based on the provocation, and where there was no cooling off period. Finally, for the Defendant to claim voluntary manslaughter, the defendant cannot be the aggressor. ✓

Here, Don, is the aggressor by breaking into the homeowners house. Thus, he cannot claim voluntary manslaughter. Additionally, he cannot claim he was provoked because, after he disarmed the homeowner, he forced the homeowner into his car, and left him in a secluded area. The defense attorney may claim that he was provoked as he disarmed the owner, but the death of the homeowner did not occur in the disarming or in the home. ✓

Thus, the courts, will invalidate the claim to voluntary manslaughter.

#### Defenses

Issue: Can Don Claim Perfect Self Defense:

Rule: Perfect self defense is where a person reasonable believes that he is in imminent danger, or facing great bodily harm; and he uses deadly force to defend himself from the danger or threat.

Here, Don cannot claim perfect self defense because he was the aggressor in attempting to burglarize the homeowner's house. Moreover, Don was the aggressor. The defense will say that Don was not armed and feared for his life when faced by the home owner and his gun. However, the DA will argue that when Don disarmed the homeowner, forced him into his car, and left him in a secluded area, Don was fully in control.

Thus, the court will find that Don's claim to perfect self-defense is not valid.

Issue: Can Don Claim Imperfect Self Defense ✓

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Rule: Imperfect self defense, is where the defendant claims that he reasonably believe that the threat of danger to his life was imminent, or great bodily harm was imminent. And he used deadly force to suppress the threat.

Here, the DA will argue that Don will not be able to claim Imperfect self defense because he was the aggressor. However, the defense will state that Don's life was in danger because the homeowner held a gun against him. However, the DA will argue that Don disarmed the homeowner, and at the point any threat to his life was over. Don was not in danger as he forced the homeowner into his car; or when he left the homeowner in the secluded area.

Thus, the court that he cannot claim Imperfect Self Defense.

Jury: The jury will not find Don guilty of Felony Murder in the First Degree, because of the Agency Limitation Rule. However, they will find him guilty of Second Degree murder with Implied Malice for having conscious disregard for human life.

*good analysis and organization,*

**END OF EXAM**

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### Attempted Robbery

Attempt is the intent to commit a crime coupled with an act in substantial furtherance of the target offense that falls short of completion, but is more than mere preparation. If the target crime is a felony, the attempt will also be considered felonious. Robbery is the unlawful taking and carrying away of the property of another by means of violence or threat of force with the intent to permanently deprive the owner of the use of his property. Because Sally intended to take money from a bank, to spend that money on a vacation, and use a gun to display as a threat of force to obtain the money, she has the intent to commit a robbery. the act that falls short of completion can be due to either failure or incomplete. A failed attempt is when the defendant does everything that was planned but something didn't go right. An incomplete attempt is when the defendant is stopped before the act is realized. This can be either due to a change of heart, or police interference, etc. When Sally, with her mask on and weapon concealed, runs from the security officer after being told to "stop and freeze", her conduct amounts to an overt act and incomplete attempt of robbery.

*What other actions qualify as an overt act?*

### Attempted Burglary

Attempt has been defined supra. Burglary is the unlawful breaking and entering of the dwelling home of another at night with the intent to commit a felony therein. The definition of burglary in most jurisdictions has been expanded to include daytime, an superficial definition of the breaking element, and to include buildings outside of dwellings. Sally intended to rob a bank, which is a recognized felony to satisfy the elements of burglary. The overt act in furtherance of committing this crime can be shown by the facts she drove and arrived to the scene of the bank, put on her mask, and concealed her weapon. Sally will likely also be found guilty of attempted burglary.

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### Attempted Murder

Attempt has been defined supra. Murder is the unlawful killing of another human with malice aforethought. Unlawful means that there is no applicable defense (discussed infra). The police officer is a human being. Malice can either be express or implied. Express malice can be proved by showing purpose and knowledge. The defendant acts with purpose if there the defendant acts with intent to kill. The defendant acts with knowledge if he is aware that his conduct will likely result in death or grievous bodily injury. The deadly weapons rule states that use of a deadly weapon during the commission of a crime satisfies the express malice requirement for murder. Implied malice can be shown under the felony murder rule, or depraved heart murder (discussed infra). Because Sally fired her gun at the police, she acted with malice, under the deadly weapons rule. Second degree murder is any murder that does not have premeditation and deliberation. This is most often seen in depraved heart murder. Depraved heart murder is when the defendant's conduct shows a extreme and conscious disregard for human life that goes beyond recklessness or criminal negligence. Because Sally fired her gun at the police car while driving, and then crashes her own car, she is clearly acting with conscious disregard for human life that goes beyond recklessness or criminal negligence. However, because no death occurred, this will be insufficient for the crime of attempt, because Sally did not have the honest intent to kill. Sally only fired the gun "so [the cops] would stop chasing her". Therefore, Sally will likely not be guilty for attempted murder.

*premed + delib. makes it 1st degree*

*need more argument here.*

### Assault

Assault is an unlawful, willful act that causes an imminent threat of harmful or offensive contact to another person. When sally fires her gun, she does so voluntarily. Because the bullet was fired in the direction of the police car and hits the windshield, there is an imminent threat of harm. The police officer is a human being. Sally's conduct satisfies the requirements for assault.

### Factual impossibility

Factual impossibility is when some unanticipated factor would make the crime impossible to complete. Sally may raise factual impossibility because the bullet proof glass of the police car is an impervious barrier and there is no possibility of harm, thereby negating one of the elements of assault. However, this is never a defense. ✓

### Withdrawal

Withdrawal from a crime requires the defendant to voluntarily abandon the crime before completion and take significant steps to prevent its completion. In this case, Sally may say argue that she never actually begun the attempted burglary/robbery as she did not yet enter the building. However, because she only abandoned the crime when stopped by the security officer, she will be unable to prove that she acted voluntarily to withdraw. Therefore, Sally will not be able to use withdrawal as a defense to attempted burglary and attempted robbery.

### Voluntary Intoxication

Voluntary intoxication is a defense where the defendant willfully becomes intoxicated prior to the formation of the mens rea of a specific intent crime. To be successful, the defendant must prove beyond a reasonable doubt that she was incapable of forming the mens rea required for the crime. Since assault is a general intent crime, voluntary intoxication will not be a valid defense. However, Sally may be try to argue voluntary intoxication as a defense to attempted robbery. The facts state that she became "extremely intoxicated", further evidenced by the way she "staggered" to her car. However, the prosecution will argue that Sally has a history of violent crimes and was recently paroled out of state prison, and that she is more than capable of forming the intent for robbery. Additionally, the prosecution will argue the facts that Sally had a semi-automatic handgun

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and a mask indicate Sally infer preparation to committing a robbery, i.e. a person does not have a combination of a semi-automatic handgun and mask without also having the intent of committing a crime. Therefore, should the prosecution succeed, Sally will not have a valid defense of voluntary intoxication.

**END OF EXAM**

*Spotted major issues - good organizer.*

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QUESTION 3

DANNY (D)

**Robbery** - The trespassory taking and carrying away of another person's property with the intent to permanently deprive the owner of the property using fear or force to obtain the property. When D went into the account holder's mailbox, he trespassed and took the box of blank checks with the intent to deprive the owner of their use of that box of blank checks. There was no element of force or fear to obtain the box of blank checks, therefore this element is not met.

The jury may find that Dan is not guilty of Robbery.



**Burglary** - The entering of a building or dwelling (can be a room within a building or a locked vehicle) with the intention to commit a theft or felony. If the intent to commit the felony is formed after entering the building or dwelling, then there is no burglary. When D entered the Wells Fargo Bank, he had the intention to commit Larceny by cashing a check that was not actually made out to him. D had already formed the intent to commit the felony before he entered the building as he had written and signed the blank check that did not belong to him before entering the bank. Because a bank is considered a commercial establishment and not a house, it would be a 2nd Degree Burglary charge.

The jury may find that Dan is guilty of 2nd Degree Burglary.

**Larceny** - The trespassory taking and carrying away of another person's property with the intent to permanently deprive the owner of the property. When D went into the account holder's mailbox, he trespassed and took the box of blank checks with the intent to deprive the owner of their use of that box of blank checks by writing and signing the checks himself so that he could take them to the bank and have the check cashed to receive the money for himself. These facts of the case are enough to meet the elements necessary for Larceny.

The jury may find that Dan is guilty of Larceny.

**Larceny by False Pretenses** - Obtaining the title (ownership) by intentional false statements of past or present facts with the intent to permanently deprive the owner of the property. D was able to obtain the title to the \$1,000 by writing himself a check using the blank checks that he took from someone's mailbox. D wrote his own name in the payee line and D also signed the check himself using the account holder's name, this is another way he provided false statements/information. D used the check to falsely cash the check at a Wells Fargo Bank and by doing so he provided false information as to the legitimacy of the check. D wanted to get the check cashed so that he could take the money to buy drugs, which would deprive the owner of the money (bank and/or account holder) of the use of the money D took. D was able to successfully cash the check and therefore was able to successfully commit Larceny by False Pretenses.

The jury may find that Dan is guilty of Larceny by False Pretenses.

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**FRED (F)**

**Robbery** - The trespassory taking and carrying away of another person's property with the intent to permanently deprive the owner of the property using fear or force to obtain the property. When D gave the cash he had to F, he did so out of "fear for his life." F took the cash from D, which was a trespassory taking of the money. F then left with the money on foot, which was carrying away the money. The intent from F was to take the money from D which would deprive D of the use of the money. And lastly, F used fear by threatening the life of D in order to get the money from him. F may argue that the money was never the property of D, since D himself had taken the money from the bank by cashing a check that he took from another person's mailbox. This defense does not negate the fact that F took the property that was on D's person at the time of the Robbery, whether or not it was factually D's property is not relevant. Factual Impossibility is not a defense to Robbery as F still had the required intent to take, carry away, and deprive D of the property by using fear to accomplish such.

The jury may find that Fred is guilty of Robbery.

END OF EXAM

*- well-written and organized*  
*- spelled major issues - missed assault*

*82*