

Monterey College of Law
Criminal Law & Procedure – Section 1 (Hybrid)
Midterm Examination
Fall 2025
Prof. K. Smith

Instructions:

Answer two (2) Essay Questions.

Answer twenty (20) MBE Questions.

Total Time Allotted: Three (3) hours.

Recommended Allocation of Time: One (1) hour per section.

Complete sentences are required. No bullet points. Clearly identify which party you are discussing in your answers.

Please recite the applicable law from the previously reviewed CALCRIM instructions. DO NOT cite to the CA Penal Code, the Model Penal Code, common law, or to federal law.

Conclusions MUST be definitive. No “on one hand” answers for your conclusions.

Headings for each section are STRONGLY encouraged for grading purposes.

Numbering the elements of the rule(s) is STRONGLY recommended for grading purposes.

QUESTION 1

Dustin and Donald have been friends since high school. Dustin has always had a bit of a temper growing up, but in his adult years, he has learned to control his temper. One night, they are both hanging out at Dustin's house. They both realize they have run out of adult beverages for the football game they will be watching that night. Dustin tells Donald he will run to the store to pick up supplies for the game that evening. The store is approximately seven minutes away.

On the way, many drivers are behaving poorly. Dustin is tailgated on the way to the store, and he is also cut off at the stoplight, causing him to have to slam on his brakes. Dustin manages not to yell and curse at the drivers. As he enters the store parking lot, a Tesla jumps in front of him, taking a parking spot that Dustin had been waiting for. Dustin keeps it together and finds a new parking spot.

Once inside the store, Dustin is having a hard time finding a specific item. Dustin approaches a store employee named Vincent who is stocking shelves. Dustin then asks for the location of the item. Vincent ignores him. Dustin raises his voice to be heard, and the employee snaps at him, "What, man? Can't you see I'm busy?" Taken aback, Dustin asks the employee where the item is located, and Vincent states, "Man, piss off. Find your own stupid item." As Dustin walks away, Vincent calls after him, "Like you need that anyway. Fat ass."

Dustin stops and almost turns around to speak to Vincent but thinks better of it. Dustin finds his item and pays for it and leaves the store. On his approximately eight-minute drive back to his home, Vincent's words ring in his ears. When he enters his home, Donald says, "What's up, man? You look pissed." Dustin explains what happened with Vincent at the store and asks Donald if he still has a gun. Surprised, Donald says he does. Dustin states, "Let's go. Bring it."

Twenty minutes later, Donald drives Dustin back to the market, which is now closed. Donald drives around back and parks the car near the employee entrance/exit. They both wait for ten minutes before Vincent exits the store wearing a hoodie and baggy pants. Both Dustin and Donald exit the vehicle and approach Vincent. Dustin has Donald's gun out as they approach. Once they are within earshot, Dustin yells, "Hey, Vincent! Now so smart-assed now, are you?"

Vincent looks up, sees both Dustin and Donald, and he reaches for his right rear pocket. Donald turns to Dustin and nods his head from the gun to Vincent. Dustin fires twice, and the first shot narrowly misses Vincent. The second shot hits Vincent in the chest, killing him. Both Dustin and Donald flee the scene. Police arrive soon thereafter, and during a search of Vincent's body, his wallet was found in his right rear pocket. No firearm was found at the scene. Through surveillance video and witness statements, both Dustin and Donald are arrested the next day.

What crime(s) can Dustin and Donald be charged with? Please specify the degree(s) of a crime, if applicable.

Please discuss any defenses Dustin may argue. ONLY focus on Dustin's possible defenses.

Hybrid
Criminal Law & Procedure – Section 1
Midterm Examination
Fall 2025
Prof. K. Smith

QUESTION 2

For two days, David has been casing a single-family home in an upscale neighborhood. One night, at 1 a.m., David approaches the home after parking several streets away. No lights are on in the home; however, there is a car parked at the curb in front of the house. David is dressed in dark clothing and has a crowbar and a large duffel bag with him. David climbs onto the roof of the house because he thought he saw an open window on the second floor. Once in position, David extends a crowbar through the window to move the curtains aside. David's hand does not enter the residence. David hears a cough from inside the room, so he hurriedly withdraws, scales back down the roof and leaves the area.

On his way back to his vehicle, he sees a late-night busybody Neighborhood Watch commander out walking his dog. This individual, named Victor, flashes his flashlight at David from across the street and says, "You there! Stop and identify yourself!" David snorts and keeps walking. Victor begins to cross the street and continues to tell David to stop while illuminating him with his flashlight.

David sticks his hand inside of his jacket pocket, simulating a firearm. David states, "Stop. Don't move." Victor complies. David states, "Empty your pockets. Do it slowly." Glaring at David, Victor removes a set of keys, a cellular phone, a pack of gum, several dog treats and one doggie waste bag. David stated, "Toss the phone to me." Victor places the phone on the ground and steps back approximately 20 feet. David approaches, takes the phone, and retreats to his car. David then drives away.

On his way home, David was lamenting the lack of items taken from the house earlier that night. Approximately an hour later, once David arrived home, he calls his friend Wally on the phone. "Man, I almost cracked that one house I had been scoping out. Someone was asleep in the bedroom, so I bugged out. I need some stuff, man! You gotta help me out." Wally stated, "What do you mean?" David stated, "I need your help cracking this house, man. You help me out, and we split the loot, 50/50." Wally agrees and hangs up the phone.

Walter never follows through with David's request; however, Wally also does not go to law enforcement to report David.

What crimes can David be charged with? Please specify the degree(s) of a crime, if applicable.

Monterey College of Law
Criminal Law & Procedure – Section 1 (Hybrid)
Midterm Examination – Answer Key

Fall 2025

Prof. K. Smith

QUESTION 1

Theories of Liability:

Second-Degree Murder: CALCRIM 520

First-Degree Murder – Premeditation and Deliberation: CALCRIM 521

Aiding and Abetting: CALCRIM 401

Possible Defenses:

Heat of Passion: Reduction to Voluntary Manslaughter: CALCRIM 570

Imperfect Self-Defense: CALCRIM 571

--

Theories of Liability for Dustin:

Issue: Is Dustin guilty of the Second-Degree Murder (CALCRIM 520) of Vincent?

Rule:

- 1) The defendant committed an act that caused the death of another person;
- 2) When the defendant acted, he had a state of mind called malice aforethought;
- 3) He killed without lawful justification.

Sub-Rules:

Express malice: If he unlawfully intended to kill.

Implied Malice:

1. He intentionally committed the act;
2. The natural and probable consequences of the act were dangerous to human life;
3. At the time he acted, he knew his act was dangerous to human life; AND
4. He deliberately acted with conscious disregard for human life.

Analysis:

As to Element 1, shooting twice at Vincent proximately caused the death of Vincent.

--

As to Element 2, we must determine if malice aforethought exists.

As to **Express Malice**, firing twice and barely missing Vincent with the first shot but the second shot striking Vincent in the chest shows Dustin's unambiguous intent to kill.

Express malice is likely found here.

Alternatively, as to **Implied Malice**:

As to Element 1, there is no indication that Dustin was under the influence, unconscious, or under duress. Dustin intentionally fired his weapon twice, which cuts against the idea of an accidental discharge.

Element 1 is likely met.

As to Element 2, the facts state that Dustin fired the weapon twice from a distance of ~ 20 feet, with one of the bullets nearly striking Vincent and the second striking Vincent in the chest. Firing a weapon a close range is incredibly dangerous to human life.

Element 2 is likely met.

As to Element 3, there is no indication that Dustin does not know that firing a weapon at close range is dangerous to human life. In addition, firing it twice at the same person shows that he knows his acts will likely result in injury or death to the target. Also, because Donald brought his firearm without being asked, and because he acknowledged he had a gun upon Dustin asking him, he knows that his actions are dangerous to human life.

Element 3 is likely met.

As to Element 4, there is no indication that he pulled the trigger accidentally. Firing twice also cuts against that argument. Also, because Dustin fired twice and one of those shots almost hit Vincent and the second struck Vincent in the chest, that increases the danger to human life.

Element 4 is likely met.

--

Therefore, implied malice to kill Vincent exists.

--

As to element three, there are no facts that give rise to a lawful justification.

Element three is met.

Conclusion: Dustin is guilty of a second-degree murder of Vincent.

--

Issue: Is Dustin guilty of a first-degree murder (CALCRIM 521) of Vincent?

Rule:

The defendant is guilty of first-degree murder if the People have proved that he acted willfully, deliberately, and with premeditation.

The defendant acted willfully if he intended to kill.

The defendant acted deliberately if he carefully weighed the considerations for and against his choice and, knowing the consequences, decided to kill.

The defendant acted with premeditation if he decided to kill before completing the acts that caused death.

Analysis:

As to willfully, firing twice shows an intent to kill. Accidental discharge is much less likely as a result.

Willfully is likely found.

--

As to acting deliberately, since Dustin asked Donald about his gun after he returned home from the store, he knows that firearms are inherently dangerous. Dustin also had the opportunity to wait around for 10 minutes waiting for Vincent. During that time, the likelihood of a physical confrontation escalated, and Dustin has time to consider his actions and the consequences. In the end, he fired twice at Vincent anyway.

Deliberation is likely found.

--

As to premeditation, the facts state that Dustin has the firearm at his side when he gets within twenty feet, not that he pulled it after the verbal confrontation. Dustin is ready to use the weapon. Dustin raises the weapon, aims, and fires twice at Vincent.

Premeditation is likely found.

--

Conclusion:

Dustin is guilty of a first-degree murder of Vincent.

--

Theories of Liability for Donald:

Issue: Is Donald guilty of a second-degree murder of Vincent (CALCRIM 520) through an aiding and abetting theory (CALCRIM 401)?

Rule:

1. The perpetrator committed the crime;
2. The defendant knew that the perpetrator intended to commit the crime;
3. Before or during the commission of the crime, the defendant intended to aid and abet the perpetrator in committing the crime; AND
4. The defendant's words or conduct did in fact aid and abet the perpetrator's commission of the crime.

Someone aids and abets a crime if he or she knows of the perpetrator's unlawful purpose and he or she specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the perpetrator's commission of that crime.

Analysis:

As to element 1, the perpetrator is Dustin in this instance. As shown above, he committed a first-degree murder of Vincent.

Element 1 is likely met.

--

As to element 2, Donald knew that Dustin intended to commit the crime since he knew that Dustin had a gun on him that he provided, that he did not object during the 10 minutes of waiting for Vincent, and that Dustin pulled his gun out once Vincent had exited the store. This was a "get back at him" situation.

Element 2 is likely met.

--

As to element 3, Donald drove the car and spotted Vincent. Donald parked the car around the back of the store as to not be seen. Donald approached with Dustin, and Donald saw Dustin remove the firearm and hold it at his side. Donald never asked Dustin to stop, to reconsider, to only "scare" Vincent.

Element 3 is likely met.

--

As to element 4, Donald drove back to the store in eight minutes and waited for 10 minutes looking for Vincent, Donald drove Dustin to the scene, parked around the back, out of sight. This gave them an element of surprise. Donald then turned to Dustin after words had been exchanged and encouraged Dustin to fire by nodding his head at the exposed gun and the intended target.

Element 4 is likely met.

--

Conclusion: Donald is guilty of a second-degree murder of Vincent through an aiding and abetting theory.

--

Issue: Is Donald guilty of a first-degree murder of Vincent (CALCRIM 521) through aiding and abetting (CALCRIM 401)?

Rule: See first-degree murder (CALCRIM 521) as listed above. The aider and abettor must share the same intent as the shooter.

Analysis: Since express malice was proven above, and since implied malice was proven above, Donald likely shared the same intent given his actions of looking for Vincent, parking out of the public's line of sight, and approaching with Dustin, who clearly had his gun out.

Donald shares the same analysis with Dustin as to willfulness, deliberation, and premeditation.

--

Conclusion: Donald is guilty of a first-degree murder of Vincent through an aiding and abetting theory as listed above.

--

Possible Defenses:

Dustin's Possible Defenses to the Charges:

Issue: Can Dustin have his murder charges reduced to voluntary manslaughter through a heat of passion defense (CALCRIM 570)?

Rule:

The defendant killed someone because of a sudden quarrel or in the heat of passion if:

1. The defendant was provoked;
2. As a result of the provocation, the defendant acted rashly and under the influence of intense emotion that obscured his reasoning or judgment; AND
3. The provocation would have caused a person of average disposition to act rashly and without due deliberation, that is, from passion rather than from judgment.

While no specific type of provocation is required, slight or remote provocation is not sufficient. Sufficient provocation may occur over a short or long period of time.

In deciding whether the provocation was sufficient, consider whether a person of average disposition, in the same situation and knowing the same facts, would have reacted from passion rather than from judgment.

If enough time passed between the provocation and the killing for a person of average disposition to “cool off” and regain his or her clear reasoning and judgment, then the killing is not reduced to voluntary manslaughter on this basis.

Analysis:

As to element one, the evidence showing provocation as to Dustin includes Vincent’s rude behavior, his initial smart remark, and his insult to him about his weight. Once Dustin arrives at the scene of the murder, Vincent speaks no words and commits no actions.

Dustin has been rudely spoken to, mocked, and dismissed as a customer. The average person would likely chalk this one up to rudeness and inconsiderate behavior, not something that would arouse a violent or intense emotion.

Element one is likely not met.

--

As to element two, the facts show that Dustin drove home in eight minutes took twenty minutes to return to the store and waited for ten minutes before spotting Vincent. One could argue that if provocation is sufficient, then Dustin is acting rashly and under the influence of that intense emotion. Dustin clearly is not taking time to plan or to plot his next actions. His statement of “Hey, Vincent! Now so smart-assed now, are you?” shows he is still upset by the earlier contact at the store.

Element two is likely met.

--

As to element 3, again, an average person would likely chalk this one up to rudeness and inconsiderate behavior, not something that would arouse a violent or intense emotion.

They would not get a co-defendant who is armed, go look for offender, park around the back, walk up to the offender, and fire at him twice.

Element three is likely not met.

--

In addition, “cooling off period” should be considered in this instance. The alleged provocation occurred ~ 38 minutes prior to the shooting. This likely makes this an invalid defense as well.

--

Conclusion:

Dustin likely will NOT have his charge reduced to voluntary manslaughter in this instance.

--

Issue: Can Dustin have his charges reduced to voluntary manslaughter though imperfect self-defense (CALCRIM 571)?

Rule:

The defendant acted in imperfect self-defense if:

1. The defendant actually believed that he was in imminent danger of being killed or suffering great bodily injury; AND
2. The defendant actually believed that the immediate use of deadly force was necessary to defend against the danger; BUT
3. At least one of those beliefs was unreasonable.

Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be.

In evaluating the defendant's beliefs, consider all the circumstances as they were known and appeared to the defendant.

Analysis:

As to element one, the facts state that Vincent took no threatening actions or said anything towards Dustin before the shooting took place. The only action that could be considered threatening is Vincent reaching for his back pocket. However, no facts indicate that Vincent is a known armed individual, nor that Dustin had had prior contact with Vincent before today.

Element one is not met.

--

As to element two, the facts do not support that danger existed at that moment for Donald to nod at Dustin to fire at Vincent. There is no immediate danger present.

Element two is not met.

--

As to element three, both prior elements are not met.

Element three is not met.

--

Conclusion:

Imperfect self-defense is not a viable defense for Dustin.

--

QUESTION TWO

Theories of Liability:

Burglary: CALCRIM 1700

Larceny: CALCRIM 1800

First-Degree Burglary: CALCRIM 1701

Robbery: CALCRIM 1600

Solicitation: CALCRIM 441

Possible Defenses:

Nothing specific from the CALCRIMs. Students can try to argue specific elements were not met.

--

Issue: Is David guilty of a second-degree burglary?

Rule:

1. The defendant entered a building; AND
2. When he entered a building, he intended to commit theft.

Under the law of burglary, a person enters a building if some part of his or her body or some object under his or her control penetrates the area inside the building's outer boundary.

Analysis:

As to element one, the thrust of the argument is at what point does David enter the building? Since an object under his control; specifically, the crowbar, enters into the building/cross the windowsill in order to pull aside the curtains, this would be when an entry occurs.

Element one has been met.

--

As to element two, we need to define larceny.

Sub-Rule:

1. The defendant took possession of property owned by someone else;
2. The defendant took the property without the owner's consent;
3. When the defendant took the property, he intended to deprive the owner of it permanently, AND
4. The defendant moved the property, even a small distance, and kept it for any period of time, however brief.

Sub-Analysis:

As to element one, David has burglar's equipment with him, as well as a bag. David is entering into a home that is not his own. This is further evidenced by David casing the house for several days, ostensibly to take items from inside.

Element one is met.

--

As to element two. There are no facts to show that this was a consensual taking. In addition, why break in if consent was given?

Element two is met.

--

As to element three, there is no indication that David planned to return the property. David had a duffle to conceal the items and leave the neighborhood.

Element three is met.

--

As to element four, David would have had move the property from the house to his car, which was several streets away.

Element four has been met.

--

As a result, element two of burglary has been met.

--

Conclusion:

David is guilty of a second-degree burglary.

--

Issue:

Is David guilty of a first-degree burglary?

Rule:

First degree burglary is the burglary of an inhabited house.

Analysis:

When David entered the residence, it was a single-family residence. In addition, despite David believing that no one was home, he heard a snore from the room he was trying to enter.

Conclusion:

David is guilty of a first-degree burglary.

--

Issue: When confronted by Victor, and after David takes his phone, is David guilty of a robbery?

Rule:

1. The defendant took property that was not his own;
 2. The property was in the possession of another person;
 3. The property was taken from the other person or his immediate presence;
 4. The property was taken against that person's will;
 5. The defendant used force or fear to take the property or to prevent the person from resisting;
- AND

6. When the defendant used force or fear, he intended to deprive the owner of the property permanently.

Fear, as used here, means fear of injury to the person himself or herself.

Analysis:

As to element one, the property at issue was the cell phone. There is no indication that anyone other than Vincent owned the phone.

Element one is met.

--

As to element two, the property was in the personal possession of Vincent since he took the phone from his pocket before setting it on the ground.

Element two is met.

--

As to element three, when the property was taken, it was on the ground within ~ 20 feet. This would qualify within immediate presence. Alternatively, the property was taken from Vincent's person due to the actions of David which caused Vernon to place it on the ground.

Element three is met.

--

As to element four, the property was not given willfully as Vincent relinquished the phone only after a threat of force was made.

Element four is met.

--

As to element five, there was no force used. Instead, there was a threat of force designed to invoke fear. Because David had his hand in his pocket simulating a gun, and because David told Vincent to "Stop" and "Don't move," fear exists in this scenario.

Element five is met.

--

As to element six, David's intent is illustrated by driving away from the scene with the phone with no plans to return it.

Element six is met.

--

Conclusion:

David is guilty of a robbery.

--

Issue: Is David guilty of solicitation for burglary?

Rule:

1. The defendant requested another person to commit the crime of burglary; AND
2. The defendant intended that the crime of burglary be committed.

Analysis:

As to element one, "I need some stuff, man. You gotta help me out!" is slightly ambiguous. Given the lack of specifics around this statement, it is unlikely that this is definitively a request for a burglary to occur.

However, "cracking" the house and "splitting loot 50/50" is much clearer.

Sub-Rule:

See CALCRIM 1700 for burglary.

Sub-Analysis:

We know that David just completed a burglary at the house in the upscale neighborhood, and that he had tools and a getaway plan for his crimes. So, this is not his first rodeo. We also know that he "needs stuff" and that he is attempting to enlist help to complete the burglary at the same house. His statements are sufficiently clear.

Element one is likely met.

--

As to element two, he specifically offers 50% of the proceeds to Wally to complete the burglary. David specifically requests Wally's help. It also sounds like there is an element of need since David expresses need for "stuff," which is either stolen loot or the money it can bring.

Element two is likely met.

--

Conclusion:

David is guilty of solicitation to commit burglary.

1)

Dustin's Crimes

Issue #1: Is Dustin guilty of 2nd degree murder?

Rule: 2nd Degree murder with malice aforethought

1) Defendant committed an act that caused the death of another person 2) when defendant acted they committed the act with malice aforethought 3) the defendant killed without a legal justification or excuse

Subrule: Malice Aforethought has two different kinds of malice:

1) Express Malice: unlawful intent to kill

Here Dustin did intend to kill Vincent if he used a gun and fired at him twice.

Express malice is likely met.

2) Implied Malice: intentionally committed the act that had a natural and probable consequence of it being dangerous to human life and conscious disregard to the human life

expand, missing element.

Here Dustin using a gun and pulling the trigger and pointing the loaded gun at Vincent and killing him was the natural and probable consequence of doing such act. Firing a gun at someone is dangerous and a demonstrating of a conscious disregard to the human life.

analysis suffers as a result.

Implied malice is likely met.

Analysis: 2nd Degree murder with malice aforethought

1) Defendant committed an act that caused the death of another person. Here Dustin took out his gun from his pocket and shot at Vincent twice. The second firing to Vincent's chest is what killed Vincent.

Element 1 is likely met

2) when defendant acted they committed the act with malice aforethought. Here using the gun and firing it at Vincent shows a conscious disregard for life. He knew the natural and probable consequence of firing a loaded gun at someone. Firing a gun at someone shows an intent to kill as they know the act is dangerous to human life.

Element 2 is likely met

3) the defendant killed without a legal justification or excuse. Here Dustin was provoked which is why he went back to the market because Vincent had an exchange of words with him. It can be argued by Dustin that he did this because of heat of passion or in self defense and he may have believed that Vincent had a gun in his pocket and that Dustin had to defend himself from immediate danger.

Element 3 could be likely met

Conclusion: Dustin is not guilty of 2nd degree murder.

Issue #2: Is Dustin guilty of 1st degree murder?

Rule: 1st degree murder

Defendant acted 1) willfully, 2) deliberately, and 3) with premeditation.

1) willfully: intent to kill: Here Dustin used a gun and pointed and shot Vincent in the chest twice which can show that there was an intent to kill. Because Dustin asked Donald for the gun it also shows that it was a willful act. It can be argued by Dustin that he didn't do this willfully because he in fact did it for self defense purposes and not with the intent to kill Vincent.

Element 1 is likely met

2) deliberately: weighed the considerations for and against their choice and knowing the consequences still decided to kill. Here it can be argued that there was plenty of time for Dustin to consider his actions as he drove home and parked and there was almost an hour of elapsed time from the provocation for him to consider his choice. It could also be argued that there wasn't enough time in the cooling off period for him to actually deliberate.

Element 2 is likely met

3) with premeditation. decided to kill before doing the act of killing. Here Dustin went home and asked Donald for the gun. It can be argued that he knew he made that decision back at the house before he headed out back to the market to find and confront Vincent. It can be argued that he brought the gun for protection and that he didn't actually decide that given that the fact pattern didn't say explicitly that he wanted to kill Vincent.

Element 3 is likely met

Conclusion: Dustin is guilty of 1st degree murder.

Donald's Crimes

Issue: Whether Donald is guilty of aiding and abetting Dustin's crime?

Rule: Aiding and Abetting: 1) The perpetrator committed the crime 2) Defendant knew that perpetrator intended to do the crime 3) before or during the crime defendant knew about it and intended to aid+abet the perpetrator 4) defendant's words or conduct did aid + abet the furtherance of the crime.

1) The perpetrator committed the crime: Here Dustin did commit a crime of homicide. Vincent was shot dead in the chest. Something to consider is if he has a defense for this homicide.

Element 1 is likely met.

2) Defendant knew that perpetrator intended to do the crime: Here Donald knew that Dustin intended to shoot and kill Vincent because he knew that he had a gun on him and nodded at Dustin to use the gun.

Element 2 is likely met.

3) before or during the crime defendant knew about it and intended to aid+abet the perpetrator: Here Donald knew that Dustin intended to shoot Vincent because back at the house he had asked for the weapon. Donald knew that Dustin had a gun on him and nodded at Dustin to use the gun.

Element 3 is likely met

4) defendant's words or conduct did aid + abet the furtherance of the crime. Here Donald gave the gun to Dustin when back at the house Dustin asked if he had the gun. Also when Vincent reached for his right rear pocket, Donald turned to Dustin and nodded with his head from the gun to Vincent.

Element 4 is likely met

Conclusion: Donald is guilty of aiding and abetting Dustin's crime.

Dustin's Possible Defenses:

Issue#1: Whether the killing of Vincent can be reduced down to voluntary manslaughter for heat of passion?

Rule: Voluntary Manslaughter: Heat of Passion

1) Defendant was provoked (2) because defendant was provoked he acted rashly and he couldn't use reason or judgment (3) this provocation would have caused the average person to act rashly without judgement.

1) Defendant was provoked. Here we have Vincent telling Dustin that he is a "fat ass" and doesn't need the item he is wanting to purchase. Vincent is also very rude by telling him to "piss off:" that because he's "busy" so to go and find his own "stupid item". Dustin has a short temper and was upset about how he was treated.

Element 1 is likely met.

(2) because defendant was provoked he acted rashly and he couldn't use reason or judgment. Dustin wanted to get back at Vincent from the market because he was pissed as the comments Vincent made to him were ringing in his ears on his way back home.

Element 2 is likely met.

3) this provocation would have caused the average person to act rashly without judgement. Being called a fat ass and having rude customer service is not enough provocation that on one's ride home would think about asking their friend at home for a gun. Eight minutes had passed where the comments were ringing in his ears but even with a temper like his an average person would not act rashly without judgement under this level of provocation.

Element 3 is not met.

Conclusion: The defense of voluntary manslaughter heat of passion is not met

Sub rule:

Cooling off Period

Rule: If enough time has passed between the provocation and the killing for a person to "cool off" and be able to gain reasoning and judgment. If not enough time has passed then it can't be reduced down to voluntary manslaughter.

Analysis: Dustin made his purchase at the store and left even after the provocation. It took him eight minutes to drive back home. After he left the house it was 20 minutes later when they returned back to the market. Dustin waited outside for another 10 minutes. Here it can be argued that after the provocation a reasonable person after having made their purchase and gone back home would have cooled off. The act of getting a gun and returning to the market and that taking another 20 minutes is more elapsed time where a average person would have had time to cool off and gain that reasoning and judgement back. It could be argued that there wasn't enough time because of the comments and circumstances and that this all occurred under an hour. Dustin also has a short temper but that doesn't validate the actions.

Conclusion: It is likely that there was enough time for a cooling off period so that the killing doesn't get reduced down to a voluntary manslaughter.

Issue#2: Whether the killing of Vincent can be reduced down to voluntary manslaughter for imperfect self-defense?

Rule: Voluntary Manslaughter: Imperfect Self-Defense

Defendant believed that he was in immediate danger of being killed or suffering great bodily injury so they believed that force was necessary because of the danger but that belief was unreasonable.

Analysis: Here, Dustin could argue that he believed he was in immediate danger because of the exchange of words he had with Vincent earlier. Vincent works at a market and Dustin could believe that Vincent could carry a weapon for protection. Here, both Vincent and Dustin were provoked that night so when Vincent reached for his right rear pocket Dustin thought of the worst. Dustin believed that Vincent had a weapon and that weapon could either kill him and/or his friend. Because he had that belief he thought that using force would be necessary which is why he took out his gun. He took out his gun thinking he had to for self defense and fired at Vincent. The belief was unreasonable because no weapon was found on Vincent and what was in his pocket was actually his wallet.

Conclusion: Dustin could not use the imperfect self-defense.

FS

2)

Issue#1: Whether David is guilty of Burglary?

Rule: Burglary 1) Defendant entered (some or part of their body or an instrument that's in their control) a building/room/structure/locked vehicle and 2) when they entered they intended to commit theft.

Sub Rule Degrees:

2nd degree - anything else that is not inhabited by a person

1st degree - any structure or dwelling that is inhabited by a person

In this particular instance, it is a 1st degree burglary because this was someone's home.

Analysis for Burglary:

1) Defendant entered (some or part of their body or an instrument that's in their control) a building/room/structure/locked vehicle. Here David used a crowbar to enter the home. So even though he himself didn't enter it only requires for something that is under control of his body to enter the home. Here he used the crowbar that was under his control to move aside the curtains. He also entered into someone's home.

Element 1 is met.

2) when they entered they intended to commit theft.. David had been casing a home in an upscale neighborhood for two days. David climbed up on the roof when he thought he saw an open window and did so with a crowbar. He intended to steal which is why he was casing the home.

Element 2 is met.

larceny analysis?

Conclusion: David is guilty of burglary.

Issue#2: Whether David is guilty of Robbery towards Victor?

Rule: Robbery 1) took property that is not of their own 2) took it from the possession of it's owner 3) took it from the owner's immediate presence 4) took it against the person's will 5) used force or fear to take it from the person 6) intended to permanently deprive the owner of their item or keep it for an extended period of time

Analysis:

1) took property that is not of their own. Here David told Victor to empty his pockets and when he saw the cellphone he asked for him to toss the phone over. David takes property that is not his.

Element 1 is met.

2) took it from the possession of it's owner. Here because Vincent emptied his pockets and tossed the phone over David was in possession of the phone.

Element 2 is met.

3) took it from the owner's immediate presence. Here David had Vincent right in front of him and the phone was in the physical control of the owner until it wasn't because of David.

Element 3 is met.

4) took it against the person's will. Here David simulated that he had a gun in his pocket and so Vincent didn't have a choice here.

Element 4 is met.

5) used force or fear to take it from the person. Here David used fear by simulating that he was carrying a gun in order for Vincent to give up the phone and be emptying his pockets.

Element 5 is met.

6) intended to permanently deprive the owner of their item or keep it for an extended period of time. Here once Vincent tosses over the phone David takes the phone and retreats to his car and drives away. Here David kept the phone. Likely so that Vincent couldn't make a phone call would be why David said he took it but at the very least even if he gave it back he would have still kept it for an extended period of time meeting element 6.

Element 6 is met.

Conclusion: David is guilty of robbery. ✓

Issue#3: Whether David is guilty of solicitation? ✓

Rule: Solicitation: 1) Defendant requested another person to commit a crime 2) Defendant intended to commit the crime 3) and defendant communicated their request to another person ✓

Analysis: 1) Defendant requested another person to commit a crime. Here David called his friend Wally and asked him for help. He said that he wanted to break into a home and that they could split the loot. ✓

Element 1 is met.

2) Defendant intended to commit the crime. David was already at the house earlier and had already entered the home and he wanted to go back but just wanted some help and was trying to recruit his friend Wally for assistance.

Element 2 is met.

3) and defendant communicated their request to another person. Here David made a phone call and communicated his request to his friend Wally.

Element 3 is met.

Conclusion: David is guilty of solicitation.

missing larceny → burg analysis.

75

END OF EXAM