Kern County College of Law
CRIMINAL LAW
Midterm Examination
Fall 2025
Prof. A. Kohler

General Instructions:

Essay Questions: Answer Three (3) Essay Questions

Total Time Allotted: Three (3) Hours

## Question #1

Alice worked for a large corporation as their business manager. Her duties included paying invoices, making deposits and withdrawals in the business account for business profits and expenses. She had access to the corporate bank accounts and the business checkbook. Alice had been paying herself extra sums of money not authorized by the corporation and had taken nearly 100,000 dollars in the three years she had been so employed. She currently had the sum of 5,000 from the money taken in a cash box in her desk drawer, Bob, also an employee at the corporation, had been watching Alice closely and was aware of the money she had taken. Bob was a tax guy at the corporation but had no access to the bank accounts, checks or any funds of the corporation. Bob took the 5,000 from Alice's desk, which he intended to use as a down payment on a new car. He also told Alice that if she did not give him a third of all the money she would be taking in the future, he would turn her into the corporation. Alice went home that night and decided she needed to kill Bob to keep her secret. So, she purchased rat poison from the Home Depot that evening. The next morning, Alice put the rat poison in Bob's favorite coffee mug. Unbeknownst to Alice, Bob had already given that mug to a new employee who later drank the coffee with rat poison and died.

Bob immediately learned of the failed plan to off him and was so shaken up he confronted Alice who confirmed the plan and threatened to tell the police Bob was actually the person stealing from the corporation. Bob got scared and took the coffee mug and discarded it in a dumpster blocks from the corporation.

What if any crimes can be charged against Alice and Bob? What are the possible defenses available to them? Please discuss the likely outcomes under the common law and modern-day trends.

*****

KCCL
Criminal Law
Fall 2025
Prof. A. Kohler

## Question #2

Deter, an adult male, liked to troll the internet to meet young ladies. In the state where Deter resided, the age of consent is 18. One young lady, Ellie, sparked Deter's interest and soon they were engaging in sex laden chats. Deter met up with Ellie at a nearby Starbucks and Ellie, who was only 16 years old, didn't disclose to Deter her age. Ellie invited Deter to a party and she told him "many of my classmates from Xavier high school will be there". Deter did not ask and Ellie did not offer any information about her age. Ellie told Deter to pick her up at a nearby fast-food restaurant and explained that she did not have a license and her parents would not approve of her hanging out with an adult man.

Deter and Ellie both drank at the party and eventually snuck off to a bedroom where they had sexual intercourse. After Ellie went back to the kitchen, Deter trolled the party looking for more girls. In a bathroom upstairs Deter found a young woman who had vomited and was barely conscious or coherent due to her advanced state of drunkenness. Deter helped her into a nearby bedroom where he covered her with a blanket and then climbed into bed and had sexual intercourse with her. She drunkenly rolled away from him several times, but she never told him to stop or actively resisted his efforts. She turned eighteen two weeks before the party. Later that evening, Frank, Ellie's boyfriend, showed up at the party and was told by numerous attendees about Ellie and older guy, Deter, hooking up. Humiliated and angry, Frank found his friend Gary and they went and found Deter. Frank and Gary beat Deter unconscious by multiple blows to the head. Frank also cut a large piece of Deter's ear off while Gary held him. Deter survived but his ear was permanently disfigured.

What if any crimes have been committed by Deter, Frank and Gary? Please discuss all crimes, possible defenses and likely outcomes. Please discuss common law perspectives where appropriate.

*****

KCCL
Criminal Law
Fall 2025
Prof. A. Kohler

## Question #3

Harold had severe mental health issues and was subject to severe auditory and visual hallucinations when off his medications. Harold had stopped taking his medications and began having repetitive auditory and visual hallucinations that told him that he MUST rob the local bank or he would be abducted by aliens. Harold did not want to get caught robbing a bank as he would be ashamed by such actions so he decided to cut his neighbors, Izzy and Joe, in on the plan as they are career criminals. The three of them planned to rob the local bank. Izzy and Joe obtained a loaded firearm which they gave to Harold to carry.

On the day of the robbery, Joe didn't feel well and he told Harold and Izzy. "I'm out. I am not involved with this anymore. Be careful you two." Joe then went home and went to sleep. Izzy and Harold then went into the bank and gave a note to the teller threatening to kill everyone in the bank if all the money in her drawer was not handed over. Harold opened his jacket pocket and showed the gun to the teller. As they were running out of the bank with the money, a security guard pulled out his gun and ordered them to stop and get on the ground. Harold believed they were going to be caught and sent to prison for a very long time, so he pulled out his gun and shot the security guard dead. Harold and Izzy were apprehended hiding in a dumpster a block away.

What crimes can Harold, Izzy, and Joe be charged with and what defenses are available to them? What are the likely outcomes?

*****

+90 Spotted issues & did thorough discussion but also discussed inapplicable defenses without flushing out why not applicable wasted discussion w/out more

1)

**Crimes of Alice**

**Embezzlement** Good discussion of embezzlement

Under common/modern law, embezzlement is the fraudulent conversion of the property of another in which the defendant is in lawful possession of such property.

Within this case, Alice worked for the large corporation as a business manager, where she solely handled business profits and expenses. Due to her position at the corporation, Alice was able to embezzle nearly $100,000 in the three years that she was employed for her own personal benefit and without the authorization of the corporation. As a result, her position allowed her to withdraw the extra sums of money and be in lawful possession of the money without the corporation's permission that was fraudulently converted for her own personal use.

On the other hand, Alice could allege that she did not embezzle the money as she was only saving it in a cash box for future use of the corporation. However, the prosecution will argue that Alice's position of a business manager allowed her to withdraw the extra sums of money without the corporation's permission for conversion to her own personal use/benefit.

All in all, under both common/modern law, Alice would be guilty of embezzlement for the $100,000 she embezzled during her time at the corporation.

**Larceny** ✓

Under common/modern law, larceny is the trespassory taking and carrying away of the personal property of another with the intent to permanently deprive and/or steal.

Within this case, Alice committed trespassory taking by paying herself extra sums of money without the corporation's permission to withdraw such sums of money. Aside from establishing a trespassory taking, Alice could be alleged to have carried away the property and depositing it into her personal accounts for her own personal use/benefit. As such, Alice had the intent to permanently deprive

and/or steal the extra sum of money from the corporation by taking the extra sums of money from the corporation for her own personal use.

It is likely that Alice's counsel will argue that Alice took the extra sums of money, but did not carry it away and instead stashed the funds in a cash box. However, the prosecution will argue that is not the case as the cash box only contained $5,000 out of the $100,000 funds withdraw.

All in all, under both common/modern law, Alice will be guilty of larceny for the $100,000 she took without the corporation's permission and/or authorization.

**Receipt of Stolen Property** NOT applicable

Under common/modern law, receipt of stolen property is the receipt of possession of stolen property that the defendant should have known or reasonably known that it was stolen.

Within this case, Alice was in receipt of stolen property as she kept $5,000 out of the $100,000 taken without the corporation's permission stashed in a cash box. As such, she was in receipt of possession of stolen property and was fully aware that the $5,000 were stolen from the corporation.

It is likely that Alice's counsel will argue that she was only storing the $5,000 for the corporation in the cash box, however, the prosecution can argue that this money was stolen and the other $95,000 were not to be accounted for if it were the case that she was saving the money in the cash box for the corporation.

All in all, under both common/modern law, Alice is guilty of being in receipt of stolen property.

**Burglary**

Under common law, burglary is the breaking and entering of an inhabited dwelling at night with the intent to commit a felony therein. Under modern law, burglary is no longer required to occur at night, and is fulfilled by the breaking and entering with the intent to commit a felony therein.

Within this case, under both common/modern law, Alice did not break and enter into the corporation as her position as a business manager allowed her to withdraw the extra sums of money. Given her position as a business manager, Alice did not break and enter into the corporation with the intent to

commit a felony inside. As the requirements for burglary were not met by Alice, she will likely not be convicted of burglary.

It's likely that the prosecution may argue that Alice "broke" and "entered" into the corporation's business accounts to withdraw the money, but it will not be supported as she did not commit a felony therein. She worked there so she did NOT enter for the purpose of committing a theft - her intent was to work at the corporation & skim as she could.

All in all, under both common/modern law, Alice will not be guilty of burglary.

**Robbery**

Under common/modern law, robbery is the taking of personal property from another's person and/or presence by threat, force, or fear with the intent to permanently deprive the person of the property.

Within this case, under both common/modern law, Alice did not commit robbery as she did not fearfully or forcefully take the money from the corporation's person and/or presence. On the other hand, Alice did demonstrate intent to permanently deprive the corporation of the stolen funds. As Alice lacked an essential part of the felony of robbery, it's likely that she will not be convicted of it.

All in all, Alice will not be guilty of robbery.

**Attempted Murder of Bob**

**Attempt** ✓ good catch

Under common law, attempt is recognized under the "proximity test" in which the question is whether the defendant was "dangerously close" to completing the crime. Additionally, under modern law, attempt is recognized as committing an overt act that is a substantial step toward the commission of the crime.

Under common law, Alice would be guilty of attempt as she was "dangerously close" of murdering Bob. Due to unforeseeable circumstances, the mug was taken by a new employee and Bob was not murdered as planned. Additionally, under modern law, Alice would also be guilty of attempt as she committed an overt act by purchasing rat poison from Home Depot and putting it in Bob's favorite mug.

All in all, under both common/modern law, Alice would be guilty of attempt. In this case, the attempted crime was murder, and she would be found guilty.

**Murder**

Homicide is the unlawful killing of another human being.

Under common law, homicide consisted of murder, felony murder, voluntary manslaughter, and manslaughter. Additionally, under modern law, homicide developed to include first-degree and second-degree murder.

Moreover, murder is the unlawful killing of another human being with malice aforethought. Murder consists of the following four categories that are essential to establish the requisite mental state of malice: 1.) intent to kill, 2.) intent to inflict serious bodily injury, 3.) depraved heart murder, and 4.) felony murder. It's essential that both the guilty mind (mens rea) and guilty act (actus reus) are present.

Within this case, Alice would most likely be found guilty of attempted murder as she intended to kill Bob with rat poison so he didn't turn her into the corporation for the extra sums of money she had been withdrawing. Additionally, it's clear that Alice intended to inflict serious bodily injury as she purchased rat poison and placed it in Bob's mug to ensure he was seriously injured after he ingested it. Additionally, Alice could also be demonstrated to reflect depraved heart murder as she showed reckless indifference to Bob's life by placing poison in his mug and hoping that he would ingest it. Lastly, within this case, felony murder would not be present as a felony was not committed. Given Alice's actions toward poisoning and potentially murdering Bob, it's clear that she would be found guilty of the attempted murder of Bob.

All in all, Alice would be guilty of the attempted murder of Bob. ✓

good discussion of facts.

**First Degree Murder**

First-degree murder is the killing of another human being with the intent to kill along with the premeditation and deliberation of the killing.

Within this case, it can be argued that Alice is guilty of attempting first-degree murder as she went home, thought about the plan, and decided to kill Bob to ensure her secret was safe. It can be argued that Alice demonstrated premeditation and deliberation by carefully buying the rat poison and ensuring it was placed on Bob's mug for his ingesting.

It's likely that the prosecution will argue attempted first-degree murder as she demonstrated intent and carefully premeditated/deliberated to ensure Bob died. On the other hand, Alice's counsel may allege that she unintentionally placed the rat poison on his mug.

All in all, Alice would be guilty of the attempted first-degree murder of Bob. good with P+D discussion

**Second-Degree Murder**

Second-degree murder is all other killings.

Within this case, attempted second-degree murder will not apply as it's clear Alice demonstrated intent along with premeditation/deliberation to ensure Bob would ingest the rat poison.

**Voluntary/Involuntary Manslaughter**

Voluntary manslaughter, also known as heat of passion killing, occurs when a person intentionally kills another lacking malice aforethought. To demonstrate voluntary manslaughter, the following must be met: 1.) reasonable provocation, 2.) defendant was provoked, 3.) not enough time between provocation and delivery of fatal blow to cool off, and 4.) defendant did not cool off in that interval.

Additionally, involuntary manslaughter is the killing of another with criminal negligence.

Within this case, Alice attempted voluntary/involuntary manslaughter will not apply as there was no heat of passion/provocation/cooling off as well as criminal negligence.

**Murder of New Employee** ✓ good dislussion of transferred intent + of murder generally

**Murder**

Homicide is the unlawful killing of another human being.

Under common law, homicide consisted of murder, felony murder, voluntary manslaughter, and manslaughter. Additionally, under modern law, homicide developed to include first-degree and second-degree murder.

Moreover, murder is the unlawful killing of another human being with malice aforethought. Murder consists of the following four categories that are essential to establish the requisite mental state of malice: 1.) intent to kill, 2.) intent to inflict serious bodily injury, 3.) depraved heart murder, and 4.)

felony murder. It's essential that both the guilty mind (mens rea) and guilty act (actus reus) are present.

Additionally, transferred intent must be taken into account in which the intent to kill one person transfers to another in the commission of a crime.

Within this case, Alice would be guilty of the murder of the new employee as she intentionally placed the rat poison in Bob's mug to poison, kill, and inflict serious bodily injury. It can be argued that Alice demonstrated depraved heart murder as she showed reckless indifference by placing rat poison in a mug where people drink from. In this case, felony murder will not apply as no felony was committed. Additionally, it must be addressed that Alice intended to kill Bob, but the mug was given to the new employee, which transferred her intent onto the new employee.

All in all, Alice would be guilty of the murder of the new employee.

**First Degree Murder**

First-degree murder is the killing of another human being with the intent to kill along with the premeditation and deliberation of the killing.

Within this case, it can be argued that Alice is guilty of first-degree murder as she went home, thought about the plan, and decided to kill Bob to ensure her secret was safe. It can be argued that Alice demonstrated premeditation and deliberation by carefully buying the rat poison and ensuring it was placed on Bob's mug for his ingesting. However, since the new employee got the mug, the intent would transfer from Bob to the new employee.

It's likely that the prosecution will argue attempted first-degree murder as she demonstrated intent and carefully premeditated/deliberated to ensure whoever ingested the poison died. On the other hand, Alice's counsel may allege that she unintentionally placed the rat poison on the mug.

All in all, Alice would be guilty of the first-degree murder of the new employee. ✓ good

**Second-Degree Murder**

Second-degree murder is all other killings.

Within this case, attempted second-degree murder will not apply as it's clear Alice demonstrated intent along with premeditation/deliberation. ✓

**Voluntary/Involuntary Manslaughter**

Voluntary manslaughter, also known as heat of passion killing, occurs when a person intentionally kills another lacking malice aforethought. To demonstrate voluntary manslaughter, the following must be met: 1.) reasonable provocation, 2.) defendant was provoked, 3.) not enough time between provocation and delivery of fatal blow to cool off, and 4.) defendant did not cool off in that interval.

Additionally, involuntary manslaughter is the killing of another with criminal negligence.

Within this case, Alice attempted voluntary/involuntary manslaughter will not apply as there was no heat of passion/provocation/cooling off as well as criminal negligence.

**DEFENSES TO ALICE**

**Self-Defense** – not available – cannot use deadly force to stop someone from reporting your crime.

Under common/modern law, self-defense is the intent to defend oneself to prevent harm from another by responding with reasonably necessary force.

Within this case, it can be argued that Alice intended to defend herself from Bob by preventing him from telling the corporation that she had been withdrawing extra sums of money. However, the prosecution can argue that self-defense will not be viable as Alice did not respond with reasonably necessary force and automatically went to obtain rat poison to kill Bob.

Regardless of self-defense, Alice will still be found guilty of the crimes discussed above.

**Duress** – NOT applicable – discussion missing of why

Under common/modern law, duress is when a person is faced with unlawful practices that they must undergo to avoid them or others from being hurt as a result of their rejection to commit to the potential crime. A reasonable person in their position would follow through with the crime.

Within this case, it can be argued that Alice was under duress as she intended to protect herself from Bob as he threatened to tell the corporation about her withdrawing the large sums of money. Given this, she responded with rat poison on his mug to ensure that she would be protected from Bob. However, it's essential to note that a reasonable person in Alice's position would not respond with rat poison and murder.

For Duress to apply must show
1) threat of serious harm or death
2) harm greater than caused by crime
3) immediate and inescapable
4) ~~Defendant must be blameless~~ and not in the situation through their own criminal or wrongful conduct.

Regardless of duress, Alice will still be guilty of the crimes discussed above.

**Bob's Crimes**

**Larceny** ✓ good

Under common/modern law, larceny is the trespassory taking and carrying away of the personal property of another with the intent to permanently deprive and/or steal.

Within this case, Bob committed trespassory taking by taking the $5,000 from Alice's desk which he intended to use for a down payment on a car. As such, Bo is guilty of trespassory taking and carrying away of the $5,000 from Alice's desk with the intent to permanently deprive and/or steal the money for his own personal benefit. As such, Bob had the intent to permanently deprive and/or steal the money for items that could be used to his own personal benefit.

It is likely that Bob's counsel will argue that he took the money from Alice's desk to ensure that she didn't use it improperly. However, this will be difficult to overcome as the prosecution can argue that he explicitly stated it would be used for a down payment on a car.

All in all, under both common/modern law, Bob will be guilty of larceny for the $5,000 he took from Alice's desk.

**Burglary**

Under common law, burglary is the breaking and entering of an inhabited dwelling at night with the intent to commit a felony therein. Under modern law, burglary is no longer required to occur at night, and is fulfilled by the breaking and entering with the intent to commit a felony therein.

Within this case, under both common/modern law, Bob technically broke and entered Alice's desk and/or cash box by taking the $5,000 she stashed. It's likely that Bob's counsel will argue that burglary will not apply as a felony was not committed when Bob took the money. As the requirements for burglary were not met by Bob, he will likely not be convicted of burglary.

↳ or a theft - yes it was

All in all, under both common/modern law, Bob will not be guilty of burglary.

may apply if Bob ~~he~~ went into office & desk w/ intent but problematic to charge.

**Receipt of Stolen Property** ✓ good discussion

Under common/modern law, receipt of stolen property is the receipt of possession of stolen property that the defendant should have known or reasonably known that it was stolen.

Within this case, Bob was in receipt of stolen property as he took the $5,000 out of the $100,000 that Alice embezzled from the corporation. As such, he was in receipt of the possession of stolen property and was fully aware that the money was stolen as he saw Alice stash it in a cash box and threatened to rat her out to the corporation.

It is likely that Bob's counsel will argue that Bob had no idea of the things Alice was doing behind the scenes such as withdrawing an obscene amount of money without the corporation's permission. However, the prosecution can allege that he was fully aware of the situation as he threatened Alice with ratting her out to the corporation if she did not give him money in the future.

All in all, under both common/modern law, Bob is guilty of being in receipt of stolen property.

+90 Good discussion of Key Concepts



2)

**Crimes of Deter**

**Statutory Rape**

Under common law, statutory rape is when a person under the statutorily prescribed age of consent (usually 16) engages in sexual intercourse with apparent and/or actual consent that constitutes rape. Under modern law, statutory rape developed gender-neutrality, removed spousal exceptions in some jurisdictions, and included close-in age exceptions such as Romeo & Juliet laws.

Under common law, Deter is clearly guilty of statutory rape as he met up with an underage female, where they agreed to attend a party together and Ellie explicitly advised that her parents would not approve of her hanging out with an adult man. Deter and Ellie proceeded to attend the party where they engaged in sexual intercourse with the apparent and/or actual consent of Ellie, which still constitutes rape as she's a minor. It's essential to note that the age of consent in this jurisdiction is 18, and Ellie was only 16 at the time they engaged in sexual relations.

Under modern law, the law took positive developments in that it became more gender-neutral, removed spousal exceptions, and included close-in age exceptions. Under modern law, the guilty conviction should remain the same as Deter had intercourse with a minor and the age of consent in this jurisdiction was 18. Ellie was 16 and would be unable to engage in sexual relations with Deter as she's not able to consent to such activities. It's likely that if Romeo & Juliet laws/statutes existed in this jurisdiction, then they may be permitted to have a relationship, but in this case it's clear Deter is guilty of statutory rape.

All in all, under common/modern law, Deter is guilty of statutory rape of Ellie.

**Rape (Count 1 of Raping Ellie)**

Under common law, rape is sexual intercourse and/or penetration by a male with a female (not his wife) with the use of force and without the female's consent. Under common law, if the female did not resist to her "utmost" then it would not constitute rape. Under modern law, rape developed positively in that it got rid of the spousal exception and resistance to the utmost by the victim. Additionally, rape shield laws also came into action where the victim was protected in court by preventing the admissibility of evidence pertaining to the victim's past sexual behavior and/or history.

Within this case and under common law trends, Deter would most likely be found not guilty of raping Ellie as there was no evidence of the use of force and/or "utmost" resistance on behalf of Ellie's part. In fact, Ellie's actual and/or apparent consent can be alluded as she willingly went to the party, drank, and snuck off with Deter where they had intercourse. Aside from that, Ellie was at no point near the age of consent such as this jurisdiction where it was 18. At no point, did Ellie ever resist sneaking off to the bedroom to engage in intercourse and/or during the act. As a result, it's likely that Deter will not be guilty of the rape of Ellie under the common law.

Moreover, under modern law trends, Deter would most likely be found guilty of raping Ellie as resistance to the utmost by the victim was no longer required. The prosecution may be able to argue that Ellie, a minor, was drunk and may not have comprehended the events that occurred with Deter such as engaging in intercourse, thereby, distorting her consent. In fact, if force was used by Deter, it's unlikely that a minor will be able to push off an adult man off of her, especially when intoxicated. Under modern law trends, Deter will be guilty of raping Ellie.

All in all, common/modern trends are significantly different due to the recent modern developments that have occurred in the crime of rape. Under common law, Deter is likely to be found not guilty while under modern law trends that is expected to shift toward a guilty conviction.

**Rape (Count 2 of Raping Drunk Woman)**

Under common law, rape is sexual intercourse and/or penetration by a male with a female (not his wife) with the use of force and without the female's consent. Under common law, if the female did not resist to her "utmost" then it would not constitute rape. Under modern law, rape developed positively in that it got rid of the spousal exception and resistance to the utmost by the victim. Additionally, rape shield laws also came into action where the victim was protected in court by preventing the admissibility of evidence pertaining to the victim's past sexual behavior and/or history.

Within this case, under common law trends, Deter would most likely be found not guilty of raping the drunk woman at the party as he helped her into the bedroom and engaged in sexual intercourse with her. However, the drunk woman did roll away from him several times, but under common law, a female must show her "utmost" resistance whether that take the form of kicking, shouting, and/or pushing the man off. In this case, the drunk woman never told Deter to stop or actively resisted his efforts, therefore, it's likely Deter would not be found guilty of raping the drunk woman.

Under modern law trends, Deter would most likely be found guilty of raping the drunk woman at the party as resistance is no longer a requirement essential to rape. Given this, the prosecution may be able to allege that the woman was completely drunk to the point that she was barely conscious or coherent, which distorted her consent. As a result, Deter proceeded to pull her into a bedroom without obtaining full consent, and engaged in sexual intercourse. Due to modern law trends and/or changes, the lack of resistance on behalf of the drunk woman would not be necessary and the prosecution may be able to argue that she didn't resist due to her drunkenness.

All in all, common/modern trends are significantly different due to the recent modern developments that have occurred in the crime of rape. Under common law, Deter is likely to be found not guilty while under modern law trends that is expected to shift toward a guilty conviction.

**Defenses of Deter**

**Mistake of Fact**

Mistake of fact is a valid affirmative defense that can be utilized to negate the requisite intent necessary for the crime.

Within this case, Deter could argue a mistake of fact as to age as he never asked and was not fully aware of Ellie's age. Given this, he may be able to establish a mistake of fact as to age, especially if this jurisdiction permits it. However, the prosecution may be able to allege that Ellie explicitly told him her parents did not approve of her handing out with an adult man, which should have raised red flags for Deter.

All in all, Deter's counsel may be able to allege mistake of fact as to age dependent if this jurisdiction allows such a defense to be established. Other than that, if it's not a defense in this jurisdiction, then Deter will not be able to argue it and will be found guilty of the crimes committed.

**Voluntary Intoxication**

Voluntary intoxication is a defense that may allow negation of the requisite intent and/or if temporary insanity resulted.

Within this case, Deter could assert voluntary intoxication as he drank at the party and could allege that he was not aware that he engaged in intercourse with Ellie, a minor, as well as with a drunk woman. He can allege that he was drunk and did not even realize what he was doing.

All in all, Deter will still be found guilty of the crimes committed above despite this defense.

**Consent**

Consent is not a valid defense, but it can be utilized to negate the intent in crimes such as rape.

Within this case, Deter's counsel could allege a defense of consent as he would claim that he obtained valid consent from Ellie and the drunk woman before engaging in sexual relations.

All in all, Deter would still be found guilty of the crimes committed above despite this defense.

**Crimes of Frank**

**Battery**

Under common/modern law, battery is the unlawful application of force and/or offensive touching of another's person.

Within this case, Frank could be found guilty of battery as he intentionally and unlawfully applied significant force and/or offensive touching to Deter's person by delivering multiple blows to the head. The prosecution may be able to argue that Frank unlawfully applied such force with purpose of delivering significant bodily injury towards Deter.

All in all, Frank will be guilty of battery.

**Aggravated Assault**

Under common/modern law, aggravated assault is the intent to cause serious bodily injury and/or with a deadly weapon.

Within this case, Frank did not utilize a deadly weapon such as a gun, but he did utilize his fists to the extent of delivering multiple blows to the head. It can be established that he engaged in aggravated assault as he delivered multiple blows with the intention of causing serious bodily injury to Deter's person.

All in all, Frank will be guilty of aggravated assault.

**Mayhem**

Mayhem is the dismemberment or disfigurement of another human being.

Within this case, Frank cut off a large piece of Deter's ear while Gary held him down. Given this, Frank engaged in mayhem as he caused the dismemberment or disfigurement of Deter.

All in all, Frank will be guilty of mayhem.

**Attempted Murder of Deter**

**Attempt**

Under common law, attempt is recognized under the "proximity test" in which the question is whether the defendant was "dangerously close" to completing the crime. Additionally, under modern law, attempt is recognized as committing an overt act that is a substantial step toward the commission of the crime.

Under common law, Alice would be guilty of attempt as she was "dangerously close" of murdering Bob. Due to unforeseeable circumstances, the mug was taken by a new employee and Bob was not murdered as planned. Additionally, under modern law, Alice would also be guilty of attempt as she committed an overt act by purchasing rat poison from Home Depot and putting it in Bob's favorite mug.

All in all, under both common/modern law, Alice would be guilty of attempt. In this case, the attempted crime was murder, and she would be found guilty.

**Murder**

Homicide is the unlawful killing of another human being.

Under common law, homicide consisted of murder, felony murder, voluntary manslaughter, and manslaughter. Additionally, under modern law, homicide developed to include first-degree and second-degree murder.

Moreover, murder is the unlawful killing of another human being with malice aforethought. Murder consists of the following four categories that are essential to establish the requisite mental state of malice: 1.) intent to kill, 2.) intent to inflict serious bodily injury, 3.) depraved heart murder, and 4.) felony murder. It's essential that both the guilty mind (mens rea) and guilty act (actus reus) are present.

Within this case, Frank could potentially be tried for attempted murder as he delivered multiple blows to Deter's head with an intent to inflict serious bodily injury. This may be enough to try Frank and potentially convict him for attempted murder as he delivered significant fatal blows to Deter's most important body part, the head. As a result, Deter went unconscious, and luckily did not die.

All in all, Deter would be guilty of the attempted murder of Deter.

**Crimes of Gary**

**Accomplice Liability**

An accomplice is a person that aids, abets, and/or assists another in the commission of a crime. An accomplice may take the form of principal in the first degree, principal in the second degree, accessory before the fact, and accessory after the fact.

Within this case, Gary will be established as an accomplice as he assisted Frank in the commission of the crimes established and discussed below. Because of his assistance and participation, he will be found guilty and can be framed as a principal in the first degree as he was present at the scene of the felony and participated in the commission of the crime.

It's likely that Gary's counsel will try to establish that he was not guilty of the crimes committed as he was merely participating by helping his friend and had no true intent in engaging in these crimes. Because of his assistance and participation, he will be found guilty.

All in all, Gary will be an accomplice to Frank.

**Battery**

Under common/modern law, battery is the unlawful application of force and/or offensive touching of another's person.

Within this case, Gary could be found guilty of battery as he intentionally and unlawfully applied significant force and/or offensive touching to Deter's person by delivering multiple blows to the head. The prosecution may be able to argue that Gary unlawfully applied such force with purpose of delivering significant bodily injury towards Deter. It must also be argued that Gary was only assisting Frank in the commission of this crime.

All in all, Gary will be guilty of battery.

**Aggravated Assault**

Under common/modern law, aggravated assault is the intent to cause serious bodily injury and/or with a deadly weapon.

Within this case, Gary did not utilize a deadly weapon such as a gun, but he did utilize his fists to the extent of delivering multiple blows to the head. It can be established that he engaged in aggravated assault as he delivered multiple blows with the intention of causing serious bodily injury to Deter's person. It must be stated that Gary merely helped and/or assisted Frank in the commission of this crime, but his guilt/conviction will not be extinguished.

All in all, Gary will be guilty of aggravated assault.

**Mayhem**

Mayhem is the dismemberment or disfigurement of another human being.

Within this case, Frank cut off a large piece of Deter's ear while Gary held him down. Given this, Gary's participation of holding Deter down as Frank cut off a large portion of his ear will be argued and established as mayhem.

All in all, Gary will be guilty of mayhem.

**Attempted Murder of Deter/Felony Murder**

**Attempt**

Under common law, attempt is recognized under the "proximity test" in which the question is whether the defendant was "dangerously close" to completing the crime. Additionally, under modern law, attempt is recognized as committing an overt act that is a substantial step toward the commission of the crime.

Under common law, Alice would be guilty of attempt as she was "dangerously close" of murdering Bob. Due to unforeseeable circumstances, the mug was taken by a new employee and Bob was not murdered as planned. Additionally, under modern law, Alice would also be guilty of attempt as she committed an overt act by purchasing rat poison from Home Depot and putting it in Bob's favorite mug.

All in all, under both common/modern law, Alice would be guilty of attempt. In this case, the attempted crime was murder, and she would be found guilty.

**Murder**

Homicide is the unlawful killing of another human being.

Under common law, homicide consisted of murder, felony murder, voluntary manslaughter, and manslaughter. Additionally, under modern law, homicide developed to include first-degree and second-degree murder.

Moreover, murder is the unlawful killing of another human being with malice aforethought. Murder consists of the following four categories that are essential to establish the requisite mental state of malice: 1.) intent to kill, 2.) intent to inflict serious bodily injury, 3.) depraved heart murder, and 4.) felony murder. It's essential that both the guilty mind (mens rea) and guilty act (actus reus) are present. Aside from this, felony murder is the killing of another human being in the commission of a felony such as rape.

Within this case, Gary could be tried for felony murder as he participated with Frank and delivered multiple blows to Deter's head rendering him unconscious. A reasonable would have sought other

means of defense, and the fatal blows would seem extreme as to establish potential felony murder liability.

All in all, Gary could potentially be tried for felony murder.

+90 Very good discussion of key concepts - good organization missed a few minor issues but well done.

3)

Harold:

**Solicitation** - Invites, requests, commands, or encourages another to commit a crime and has the specific intent for the other to commit the solicited crime. (Specific Intent Crime) Merges with conspiracy.

The prosecution could argue that Harold invited Joe and Izzy into his plan to rob the bank because he was scared to commit it on his own and he knew that Joe and Izzy were prior criminals.

The jury will likely find Harold guilty of Solicitation and this Solicitation charge will merge with conspiracy. ✓

and an overt act

**Conspiracy** - when 2 or more parties enter into an agreement with the intent of the agreed upon act to be committed. (Specific Intent Crime).

The prosecution could argue that Harold conspired with Joe and Izzy because they are three parties and they all intend to rob the bank.

The jury will likely find Harold guilty of conspiracy with Joe and Izzy. ✓

**Robbery** - The taking or carrying away of another's personal property from their person's or presence through force or threat of force with the intent to permanently deprive. (Specific Intent Crime) - good

The prosecution could argue that Harold took the money from the bank with people present by threat of force because he took the money when the bank was still open and he threatened to kill everyone if the bank did not give him the money.

The jury will likely find Harold guilty of Robbery. yes

**Aggravated Assault** - Placing another in fear of imminent injury becomes aggravated when D uses a deadly weapon.

The prosecution could argue that Harold placed another in fear of imminent injury because he showed a gun to the teller which caused her fear. Due to him showing the teller his gun, which is a deadly weapon, the assault became aggravated.

The jury will likely find Harold guilty of Aggravated assault. ✓

Burglary discussion ?

**Murder -**

**Homicide**: The unlawful killing of another

In **CL** homicide includes;

**Murder**: D deliberates or premeditates the killing of another with Malice aforethought.

**Voluntary Manslaughter**: Involves heat of passion and imperfect self defense.

**Involuntary Manslaughter**: Involves reckless indifference and misdemeanor manslaughter

In **MPC** homicide includes;

**1st degree Murder**: D deliberates or premeditates the killing of another with Malice aforethought. (Specific Intent Crime)

1. **Intent to kill** - D intended to kill the victim.

2. **Intent to cause grievous bodily harm** - D intended to cause great bodily injury upon the victim with the chance of death.

3. **Depraved heart** - reckless indifference.

4. **Felony Murder** - a death that occurs during the commission of either Mayhem, Rape, Sodomy, Burglary, Arson, Robbery, Carjacking, or Kidnapping.

**2nd degree Murder**: all other murder that are not first degree.

**Voluntary Manslaughter**: Involves **heat of passion** which is when the D is 1. reasonably provoked, 2. did not have time to cool off, 3. did not cool off, and 4. was provoked and **imperfect self defense** which is when the D kills in self defense with the honest but unreasonable belief that they faced deadly force against them.

**Involuntary Manslaughter**: Involves **gross negligence** which is when the D engages in an act that is grossly negligent and causes a risk to human life and **misdemeanor manslaughter** which is a death that occurs during the commission of a misdemeanor.

The prosecution would argue that Harold's actions fall under Murder in CL and 1st degree Murder in MPC because Harold intended to kill the security guard because he shot him based off on fear that he will be caught. The murder also falls under 1st degree Murder in MPC because this was a felony murder since the security guard was killed during the commission of the felony crime of Robbery. ✓ yes

The jury would likely find Harold guilty of Murder in CL and 1st degree Murder in MPC ✓ yes

**Insanity Defense** - D may claim insanity but there are four tests to prove insanity. They will not get off free, they will be sent to a mental hospital if found to be insane. Good understanding of insanity defense

1. **M'gnahten Test** - a disease of the mind causes a defect in their reasoning powers that results in them not understanding the nature and quality of their act or wrongfulness of their act.

The prosecution could argue that under the M'gnahten, Harold is not insane because he understood the nature of quality of his action since he solicited Joe and Izzy because he was ashamed of committing the robbery on his own.

The jury will likely find that Insanity is not a defense.

2. **Irresistible Impulse Test** - D could not control their conduct or conform their conduct to the law.

The prosecution could argue that under the Irresistible Impulse Test, Harold is not insane because he could control his conduct and conform them to the law because he knew from when he started the solicitation that he could be caught and he still planned it.

The jury will likely find that Insanity is not a defense.

3. **Durham Test** - D's conduct was a product of their mental illness.

The prosecution could argue that under the Durham Test, Harold may be insane because he only committed the robbery because he believed that if he didn't, he would be abducted by aliens.

The jury will likely find that Insanity is a defense to all crimes and he would be sent to a mental hospital.

4. **Model Penal Code Test** - D lacked the substantial capacity to appreciate the criminality of their act or conform their conduct to the requirements of the law.

The prosecution could argue that under the model penal code test, Harold is not insane because he had the capacity to appreciate the criminality of his actions because he was constantly scared of being caught and he knew he could have stopped and conformed to the law.

The jury will likely find that Insanity is not a defense.

Izzy:

**Conspiracy** - when 2 or more parties enter into an agreement with the intent of the agreed upon act to be committed. (Specific Intent Crime) good

The prosecution could argue that Izzy conspired with Joe and Harold because they are three parties and they all intend to rob the bank.

The jury will likely find Izzy guilty of conspiracy with Joe and Harold.

**Robbery** - The taking or carrying away of another's personal property from their person's or presence through force or threat of force with the intent to permanently deprive. (Specific Intent Crime) good

The prosecution could argue that Izzy took the money from the bank with people present by threat of force because she took the money when the bank was still open and she threatened to kill everyone if the bank did not give her the money when she showed the note to the bank teller.

The jury will likely find Izzy guilty of Robbery. yes ✓

**Murder** - See rule above for Homicide and Murder.

The prosecution could argue that although Izzy did not kill the security guard, Izzy is part of a conspiracy with Harold and Joe and will be guilty of all crimes they commit. AND Felony-MURDER applies to her.

The jury will likely find Izzy guilty of Murder in CL and 1st degree Murder in MPC. good

Joe:

**Conspiracy** - when 2 or more parties enter into an agreement with the intent of the agreed upon act to be committed. In MPC an overt act must occur and it does not need to be criminal in nature. (Specific Intent Crime)

The prosecution could argue that Joe conspired with Harold and Izzy because they are three parties and they all intend to rob the bank.

The jury would likely find Joe guilty of conspiracy. ✓

**Withdrawal of conspiracy** -

**CL:** D communicating withdrawal prior to the commission of the offense in not valid.

switched right?

The prosecution could argue that Joe withdrew his involvement before they went and robbed the bank.

The defense could argue that although he withdrew, this is not a valid defense in CL

The jury will likely find that in CL Joe did not withdraw from the conspiracy. ✓ b/c he needed to do what else? yes - your full discussion of MPC is spot on!

**MPC:** D must renounce involvement prior to the commission of the offense and thwart the success of the conspiracy. Demonstrate complete and voluntary renunciation.

good

The prosecution could argue that Joe did renounce his involvement before the commission of the crime because he told Izzy and Harold that he would not be going before they left to rob the bank.

The Defense could argue that although Joe renounced his involvement before commission of the robbery, he did not thwart the success of the conspiracy because he went home and went to sleep instead of reporting Harold and Izzy.

The jury will likely find in the MPC that Joe did not withdrawal from the conspiracy. ✓

**Robbery** - The taking or carrying away of another's personal property from their person's or presence through force or threat of force with the intent to permanently deprive. (Specific Intent Crime)

The prosecution could argue that although Joe was not present at the bank when Izzy and Harold robbed it, Joe is part of a conspiracy with Harold and Izzy and will be guilty of all crimes they commit. good

The jury will likely find Joe guilty of robbery. ✓

**Murder** - See rule above for Homicide and Murder.

The prosecution could argue that although Joe was not present at the bank when Izzy and Harold robbed it, Joe is part of a conspiracy with Harold and Izzy and will be guilty of all crimes they commit.

↳ felony-murder

The jury will likely find Joe guilty of Murder in CL and 1st degree Murder in MP.

**END OF EXAM**