

**June 2013 Baby Bar**  
**Question 4 – Criminal Law**

**1. With what crimes, if any, can Dan reasonably be charged, and what defenses, if any, can he reasonably raise? Discuss.**

**Solicitation**

Solicitation is one who has the intent to induce another to commit an unlawful act.

There has been a series of nighttime burglaries. The burglar would break into a home when the owner was away and steal items of value. Further, the burglar ate cookies found at the house and became known as the cookie bandit. Dan wanted to protect his property and prevent a burglary from occurring while he was away. He decided to lace some cookies with cyanide and leave them out on the kitchen counter for the burglar, if he was burglarized. Dan asked his friend Ann to help him obtain the cyanide. The prosecution will argue that Dan's conduct of asking Ann to help obtain the cyanide establishes his intent to induce Ann to commit an unlawful act.

Dan will counter that he was merely asking his friend, Ann for help. Further, he was told by a police officer that he could use deadly force to prevent a burglary, and he believed that lacing cookies with cyanide was lawful. He had no intent to have Ann commit an unlawful act.

Thus, there is no solicitation.

**Conspiracy**

Conspiracy is the agreement between two or more to commit an unlawful act.

Dan asked Ann his friend to help him obtain the cyanide. Although Ann tried to talk Dan out of his plan, pursuant to Dan's request she did get the cyanide for him. Thus, there was an agreement. The agreement was between Dan and Ann, i.e., two or more. The agreement was to obtain cyanide in order to lace cookies to prevent any burglary from taking place at Dan's home while he was out of town for the weekend. Thus, there was an agreement to commit poisoning, an unlawful act. However, Ann will argue Dan assured her that his action of lacing the cookies was legal. He did talk to a police officer who told him that he could use deadly force in order to prevent a burglary.

Since Ann and Dan believed that the lacing of the cookies was permissible, they had no intent to commit an unlawful act. Therefore, there was no agreement to do an unlawful act.

Therefore, Dan will not be charged with conspiracy.

## **Murder**

Murder is an unlawful killing committed with malice aforethought. Malice aforethought can be evidenced through intent to kill, intent to cause great bodily pain and willful and wanton conduct.

Dan laced some cookies with the cyanide, left them on the kitchen counter and left for the weekend. During his absence, his neighbor Jane entered his house with her five-year-old son Victor. Jane always cleaned Dan's house on the weekend. While she was cleaning, her son Victor found the cookies and ate one. Victor died. Thus, an unlawful killing occurred.

Dan's act of lacing the cookies with cyanide and leaving them out on the kitchen counter and knowing that the burglar always eats a cookie from the home burglarized, his actions show he had the intent to kill. Further his actions of lacing the cookies in order to poison a burglar to protect his property from being stolen shows Dan's intent to cause great bodily harm. Lastly, leaving cookies laced with poison is a reckless disregard for human life. Therefore, Dan's actions were willful and wanton.

Dan will argue he was merely trying to prevent a burglary from occurring and had no intent to harm Victor. The death of Victor was a mere accident.

However, the prosecution will rebut by stating Dan's act of lacing cookies and knowing that Jane cleans his home on the weekend and leaves the cookies out on the counter equates to a reckless disregard for human life. Thus, malice is established.

Dan will be convicted of murder.

## **Actual Causation**

"But for" Dan lacing the cookies and leaving them out on the counter Victor would not have eaten a cookie and have been killed.

Therefore, Dan is the actual cause of Victor's death.

## **Proximate Causation**

It is foreseeable that if you lace cookies and leave them out for persons to see, that one may be eaten and result in a death. Dan knew his cleaning lady Jane cleaned his home on the weekend. It is foreseeable if you lace cookies and leave the cookies out on the counter that someone may eat them, particularly someone who is known to you and who has access to your home. Thus, Victor's death is a foreseeable result of Dan's conduct.

Therefore, Dan is the proximate cause of Victor's death.

## **First Degree Murder**

First degree murder is shown by specific intent to kill, plus premeditation and deliberation, or by poison.

Dan did lace the cookies with cyanide in order to prevent a burglar from burglarizing his home. The fact that Victor was the one that ended up eating the cookie that caused his death, versus the burglar, does not negate Dan's specific intent to kill. However, Dan did not know that Victor was going to be in his home. The act of leaving laced cookies out was not a sufficient act to prove intent to kill Victor with premeditation. Thus, Dan did not have the requisite specific intent to kill Victor.

However, the prosecution will argue Dan laced the cookies with cyanide, which is a form of poison. Since Dan did poison Victor he will be charge with first degree murder.

Therefore, Dan may be convicted of first degree murder.

## **Second Degree Murder**

Second degree murder is all murder that is not first degree murder.

If Dan's conduct is found to be wanton and reckless, he will be found guilty of second degree murder.

## **Mistake of Law**

A mistake of law generally is not be a defense unless you can show that the Defendant, although mental state is present, the belief that his conduct was not proscribed by the criminal law.

Dan received advice form a police officer that he can use deadly force to prevent a burglary. However the advice from the office is ambiguous. One may use deadly force to defend one's property if they are in reasonable fear of serious bodily harm, but Dan knew he was not going to be home, and set his plan in motion in order to kill the burglary. Dan is not subject to threat of harm. His use of deadly force was excessive and therefore his mistake of the law is not a valid defense.

## **Mistake of Fact**

A mistake of fact generally is no defense. However, it will be a defense if the defendant can prove that there was no mens rea for the criminal act based on the facts he believed.

Dan was told by a police officer that he can use deadly force to prevent a burglary. Believing that he could lace the cookies in order to prevent a burglary proves Dan had no means rea to commit an unlawful act.

However, Dan left out cookies that were poisoned knowing that he cleaning lady cleans on the weekend. Dan should have known that the cookies could have been eaten since he left them out. Generally one does not leave out cookies unless you intend someone to eat them.

Dan should have been aware that Jane or anyone who comes over could eat the cookies. Further, Dan was aware that the cookies were laced and would cause death. Hence, he did have the intent to kill. Therefore based on Dan's actions he did have the mens rea to commit an unlawful act.

Thus, mistake of fact is no defense.

### **Defense of Property:**

Under common law, a person could use reasonable force, including deadly force, to defend his home. Modernly a person may use reasonable force to defend his property where he reasonably believes that a felony or harm was intended or committed.

Knowing that the person who is burglarizing homes always eats a cookie from the house, Dan laced cookies with cyanide and left them out on the kitchen counter knowing that they would be deadly. Dan's plan was that if the burglar entered into his home while he was out of town for the weekend, that the burglar would eat the cookie that was laced with cyanide and kill the burglar. Thus, Dan used excessive force.

Dan will argue that he was told by a police officer that he could use deadly force to prevent a burglary. Given that Dan was told this from a person in an official capacity, he used deadly force and was legally justified in lacing the cookie.

However, Dan may not use deadly force to protect his property. Dan knew that the burglar only hit homes when the owners were away. His life was not in any potential threat. Since Dan was not defending his home under an imminent threat to his life, he will not be able to raise the defense of property as a legal justification for his actions.

Thus, defense of property is no defense.

### **Prevention of Crime**

At common law, deadly force may be used to prevent perpetration of a felony. Modernly, only non-deadly force reasonably necessary to prevent a misdemeanor or felony may be used unless there is a need to prevent present public danger. Further, the party using this defense must be a non-official in hot pursuit, and within a reasonable time after the crime was committed.

Dan was aware that there had been many nighttime burglaries in his area. Dan was going away for the weekend and decided to prevent his home from being burglarized. He laced cookies with cyanide, knowing that the burglar eats cookies from the houses burglarized. However, Victor was in Dan's home with his mother who was doing her weekly cleaning. There was no crime being committed in order to justify the use of deadly force. Dan was not in hot pursuit of the burglar. Dan was a homeowner and since no life was threatened he may only use reasonable force to protect his property from being stolen.

Therefore, Dan was not legally justified property his property with laced cookies.

## **Voluntary Manslaughter**

Voluntary manslaughter is murder mitigated down to a lesser offense due to an imperfect defense.

Under the circumstances Dan will argue that while defense of property or crime prevention will not be available as a complete defense to his murder of Victor, it still should apply as an imperfect defense to mitigate the murder to voluntary manslaughter. Since Dan believed that he had a right to defend his property and his belief was based on good faith he may raise an “imperfect” defense allowing the murder to mitigate to voluntary manslaughter.

Therefore, Dan’s murder of Victor may be mitigated to voluntary manslaughter.

## **Involuntary Manslaughter**

Involuntary manslaughter is the unintentional killing without malice aforethought.

Dan was acting in disregard for other that may be exposed to the laced cookies. Such reckless conduct would be sufficient to establish criminal negligence. Dan’s act of lacing the cookies and leaving them out on the kitchen counter for people to eat, which Victor ate and was poisoned resulting in his death was an unintentional killing without malice aforethought.

Therefore, Dan should be found guilty of involuntary manslaughter.

**2. With what crimes, if any, can Ann reasonably be charged, and what defenses, if any, can he reasonably raise? Discuss.**

### **Conspiracy**

Defined and discussed supra.

### **Accomplice Liability**

Any person who aids, abets, or assists a principal in committing a crime with the specific intent that the crime be carried out will be held liable for accomplice liability.

Dan decided to protect his property by lacing some cookies and leaving them out for the burglar to eat, if the burglar decides to burglarize his house. He asked his friend Ann if she would help him get the cyanide. Ann tried to talk him out of his plan, but he assured her it was lawful and she then got him the cyanide. By Ann giving Dan the cyanide in order for him to lace cookies with it helped him to carry out his plan. Thus, Ann’s conduct of providing the cyanide to Dan aided Dan in committing the crime of murder. Further, her actions of providing the cyanide knowing the his intent was to lace cookies and have them eaten by the burglar in order to kill, shows Ann’s intent to assist Dan with his “plan” even though Ann did not participate in lacing the cookies with the cyanide herself.

Therefore, Ann will be held liable as an accomplice.

**Scope of Accomplice Liability**

An accomplice is liable for any of the crimes that he aided, abetted, or assisted with.

Ann will be held liable for all the crimes that occurred in furtherance of Dan's actions of lacing the cookies with cyanide. Thus, Ann will be guilty for the murder of Victor as a Principal in the Second Degree since she supplies the cyanide that resulted in killing Victor.