

**October 2016 Baby Bar
Question 1 Criminal Law
Model Answer**

1. Can it be reasonably argued that Beth is guilty of

a. Theft? Discuss

Conspiracy

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

Al and Beth were sitting and playing video games and drinking beer. After finishing the last beer Al said to Beth, "I need another beer. Can you lend me some money and drive me to the store?" Beth responded she did not have any money but could drive him to the store. At this point there is no agreement to commit an unlawful act.

Then Al laughed and stated he had an idea how to get some beer without paying for it. He told Beth that she could drive him to the store, and park behind the store near the emergency exit. Beth did drive Al to the store and she did park near the emergency exit waiting for Al. Since Beth knew that Al did not have any money, and after hearing his idea on how to get beer without paying for it and then driving him to the store, she knew Al was going to steal the beer and she was helping and aiding him to steal the beer based on her actions. Therefore, based on Beth's conduct, there was an implied agreement between Beth and Al.

The agreement was between Al and Beth, i.e., two or more.

Knowing that Al told her he had an idea on how to get the beer without paying for it, and her actions of driving him to the store, staying in the car and waiting by the emergency exit, shows she knew he was going to steal the beer. In addition, when she drove him to the store, she knew he had no money and was waiting in the car in order to help Al get the beer without paying for it. Therefore, they had the intent to commit an unlawful act, i.e. larceny of the beer.

Therefore, Beth will be charged with conspiracy.

Larceny

Larceny is the trespassory taking and carrying away of personal property of another, with the specific intent to permanently deprive.

Al had Beth drive him to the store in order to get beer. When Beth drove Al to the store, Al entered the store, picked up a six-pack of beer, and began walking toward the emergency exit. Since Al did not have any consent from the Friendly Market to take the beer, and he had no money to pay for it, nor did he have any intentions on paying for the beer, there was a trespassory taking. Al will counter that when he picked up the beer and started walking towards

the emergency exit when the security guard shouted “Stop, Thief.” At that point Al then put the beer on the floor and ran through the emergency exit. Hence there was no trespassory taking,

However, the law has held any movement of property with the intent to steal is a trespassory taking. Further, Al did pick up the beer and walked towards the emergency exit, thus, there was a carrying away. The beer belonged to the Friendly Market. Thus, it was the property of another. Al took the beer and headed towards the emergency exit. Since Al had no intent to pay for the beer, it establishes there was specific intent to permanently deprive the store of its beer.

Thus, Al has committed a larceny.

Co-Conspirator Liability: Pinkerton’s Rule

Since Beth was a co-conspirator, she will be held liable for all crimes committed in furtherance of the conspiracy, including the larceny since the crime was a foreseeable consequence of the conspiracy.

Since the agreement was to go in the Friendly Market and take a six-pack of beer, and the fact that Beth knew Al did not have any money to pay for the beer, and knowing of his plan that he was going to pick up the beer and leave through the emergency exit, in order to get into her car since she parked near the emergency exit, the larceny was reasonably foreseeable and in furtherance of their agreement.

Therefore, Beth will be guilty of the larceny based on the Pinkerton’s rule.

Intoxication

Intoxication is a complete defense to a specific intent crime. The defendant must prove a lack of mens rea to negate the specific intent element because of his intoxication.

Al and Beth were sitting in Al’s apartment playing video games and drinking beer. They did finish the beer, thus Beth will argue based on her actions of drinking the beer she could not form the specific intent to commit a crime.

However, based on the fact that Beth knew that Al had no money to pay for the beer. In addition Al told her of his plan on how he could obtain the beer without paying for it. Since she was aware of these facts and she was able to drive him to the store and park near the emergency exit, these are all factors demonstrating that she was fully aware of her actions. Thus, she had knowledge and was aware of what she was doing in aiding Al showing she had the specific intent.

Hence, intoxication will not be a valid defense.

b. Robbery? Discuss

Robbery

Robbery is the trespassory taking and carrying away of the personal property of another by force, fear or intimidation with the intent to permanently deprive.

As discussed Al went into the store with the intent to take the beer without paying for it. Al entered and picked up the beer and headed for the emergency exit. Thus, there was a trespassory taking and the carrying away of the personal property of another. However, when Al headed for the emergency exit the security guard yelled at him and stated Stop Thief. At that point Al placed the beer down on the floor and ran. Therefore, the taking of the beer did not occur with force, fear or intimidation. Bob intended to apparently deprive the store of the beer, but because of the security guard was yelling at him he placed the beer down and ran off.

Thus, although Al had the intent to steal the beer, he did not obtain the beer by force, fear or intimidation.

Therefore, Al will not be charged with robbery.

Co-Conspirator Liability: Pinkerton's Rule

Defined supra.

Beth will argue that the robbery was not foreseeable. The agreement was to go in and take a six-pack of beer. Al did not have any weapon and the agreement was limited to the taking of the six-pack of beer without paying for it, by leaving through the emergency exit. Although, Beth as a co-conspirator, will be held liable for all crimes committed in furtherance of the conspiracy, since no robbery took place she will not be found guilty of robbery under the Pinkerton's rule.

C. Murder? Discuss.

Murder

Defined and discussed infra.

Special Felony murder rule

If a killing is done by an innocent party then a co-felon may be guilty of the murder. Under the Redline view, the prosecutor will need to show that an innocent party did the killing in order to impose guilt on a co-felon.

Based on the facts Carla, a security guard did shoot and kill Al. Since Carla was trying to protect the Friendly market from Al stealing a six-pack of beer, she is an innocent party. Since a killing did result, Beth may be guilty for the murder of Al depending on the jurisdiction.

Under the Common Law view liability will be found if a killing did occur. Based on the facts Carla, the security guard, shot and killed Al. Thus, under a common law jurisdiction Beth will be guilty of murder.

Under the Modern view liability for the killing will only be found if the killing was done by one of the felons. Based on the facts Carla, who was a security guard, did the killing and she was not a felon to the crime.

Thus, under the modern law view Beth will not be guilty of the murder of Al.

Co-Conspirator Liability: Pinkerton's Rule

Defined supra.

Although a murder is a foreseeable act for the crime of robbery, that was not within the scope of the larceny of the beer and not committed in furtherance of the conspiracy. The crime of murder is not an act that would be a consequence of the act of taking a six-pack of beer, i.e. a larceny, and thus, the murder is outside the scope of the conspiracy.

Therefore, Beth will not be charged with murder under the Pinkerton's rule.

2. Can it be reasonably argued that Carla is guilty of murder and if so, what defense(s) can she raise? Discuss.

Murder

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

Carla, a security guard, was watching Al and observed him pick up a six-pack of beer and head for the emergency exit. At that point she shouted "Stop Thief." Al put the beer down on the floor and ran out through the emergency exit. Carla then started to run after him. In the alley behind the store, she shouted Stop or I'll shoot!' When Al did not stop, she fired a warning shot. However, Al kept running. She then took careful aim, shot and missed, and then took careful aim again and shot and killed Al. Based on her act of taking careful aim and shooting Al and killing him, an unlawful killing occurred. Carefully taking aim with a gun, and firing it directly at someone, i.e. Al shows Carla had the intent to kill, or at least the intent to cause great bodily harm.

Carla's act of shooting Al shows a reckless disregard for human life. Therefore, Carla's conduct was willful and wanton. Thus, malice is established.

Carla will be convicted of murder.

Actual Causation

“But for” Carla chasing Al and firing her gun at, Al would not have died.

Therefore, Carla is the actual cause of Al’s death.

Proximate Causation

It is foreseeable aiming a gun and shooting at someone that a death would result. Thus, Al’s death is a foreseeable result of Carla’s conduct.

Therefore, Carla is the proximate cause of Al’s death.

First Degree Murder

First degree murder is shown by specific intent to kill, plus premeditation and deliberation. Carla’s act of trying to prevent Al from stealing the beer and preventing him from escape shows she did not have premeditation to kill Al. Thus, Carla did not have the requisite specific intent to kill Al.

Therefore, there is no first degree murder.

Second Degree Murder

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

If Carla’s conduct is found to be wanton and reckless, she will be found guilty of second degree murder.

Justification – 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.

Carla was pursuing Al because Al had tried to steal a six-pack of beer from the Friendly Market, where she was a security guard. Upon seeing Al pick up the beer and head toward the emergency exit, she responded and shouted “Stop Thief.” When Al placed the beer on the floor and then ran out the emergency exit she pursued him. Thus, Al had just tried to steal the six-pack of beer which is a crime. The fact that Carla chased after Al immediately after Al had tried to steal the beer indicates that Carla was in hot pursuit and that she was pursuing Al within a reasonable time after the attempted crime was committed. Since Carla was the security guard, she was not a police officer or other official charged with preventing any crime as part of her job duties. Therefore, Carla was legally justified in pursuing Al.

However, once Carla started to pursue Al, knowing that he did not steal the beer, and knowing he did not stop running when she fired a warning shot, her act at firing at Al was not reasonable. Al was not in the act of committing a felony, only a misdemeanor. In addition, her action of taking careful aim and shooting directly at Al is not reasonable force. Carla had not right to use deadly force in order to stop Al from fleeing from the Friendly Market because of his attempted larceny.

Therefore, crime prevention is not a valid defense for Carla.

Justification – 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.

As discussed *infra*, Carla started to pursue Al because he tried to steal a six-pack of beer. Given the fact that Al had placed the beer on the floor, and then fled establishes that Al was not in the commission of a felony only a misdemeanor. Carla pursuit and continuously running after Al is not reasonable. In addition, Al did not have a weapon, was not threatening Carla. Hence, Carla taking aim and shooting at Al killing him is the use of deadly force. Since her life was not being threatened she used excessive force and she will not be able to raise the defense of property as a legal justification for her actions in common law or modern law jurisdictions.

Voluntary Manslaughter

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

Under the circumstances Carla will argue while the defense of property or crime prevention is not a valid and complete defense for her killing of Al, it is an imperfect defense, and the murder should be mitigate to voluntary manslaughter.

Therefore, Carla's killing of Al will be mitigated to voluntary manslaughter.