

**October 2018 Baby Bar
Question 4 Criminal Law
Model Answer**

With what crimes should Moe, Larry and Curley each be charged, and what defenses might each one raise? Discuss.

State v Moe

Conspiracy

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

Curley, Moe and Larry were discussing plans to rob Bank. Moe and Larry agreed. Thus, there was an agreement evidenced by their act of agreeing to rob Bank.

The agreement was between Moe and Larry, i.e., two or more. Further, the facts show both agreed to rob the bank. Therefore, the agreement was to do an unlawful act, i.e. robbery.

On the planned day, Curley, Larry, and Moe "drove to Bank" establishing an overt act in furtherance of the conspiracy to commit the robbery. Moe will be charged with conspiracy.

Therefore, Moe can be charged with conspiracy.

Burglary – Common Law

At common law, burglary is the nighttime breaking and entering of a dwelling house of another, with the specific intent to commit a felony therein.

The facts state that on the day planned the three of them drove to Bank. Generally banks are open during business hours, thus, no nighttime. The bank was opened for business, and Larry and Moe proceeded to go inside the bank. Thus, there was no breaking. Both did enter the bank, thus, there was an entry. Since it was a bank, it is not a dwelling house of another. Larry and Moe entered Bank in order to rob Bank. Hence, they entered with the specific intent to commit a felony therein.

In light of the above argument, the nighttime and the breaking elements of a common law burglary are not present. Thus, Moe and Larry will not be charged with common law burglary.

Modern Law Burglary

Modern law burglary is the trespassory entry into a structure to commit an unlawful act.

Larry and Moe entered into Bank in order to rob Bank. Thus, their entry was trespassory. Larry and Moe entered Bank, which is a structure. As discussed above, they had the specific intent to commit a crime when they entered Bank, i.e. rob Bank.

Therefore, Moe will be charged with modern law burglary.

Murder of Guard

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

Once in the bank Larry noticed that the armed Bank guard was approaching them. Larry pulled out his gun and fired at the guard but missed. Moe then shot the guard dead. Thus, an unlawful killing occurred.

Based on the facts seeing the armed Bank guard approaching them when they entered Bank and Larry shooting at him, although missing, Moe shot the guard dead. Hence, his actions show he had intent to kill.

Shooting a gun at the guard, killing him, shows Moe had intent to cause great bodily harm.

Further, shooting a gun at anyone shows a reckless disregard for human life. Therefore, Moe's conduct was willful, wanton and reckless.

Lastly, Larry and Moe were in the perpetration of a robbery when he shot the armed Bank guard, hence, the killing was done while in the commission of a felony, i.e. robbery.

Therefore, there is malice aforethought establishing murder.

First Degree Murder

First degree murder can be shown by felony murder rule.

Felony Murder

Any death caused in the commission of, or in an attempt to commit, a dangerous felony is murder. Malice is implied from the intent to commit the underlying felony. However, the felony must be distinct from the killing itself.

If Moe is found to have committed burglary or attempted robbery, the prosecution can establish that Moe killed the armed guard while within the res gestae of the criminal act, i.e. a burglary or attempted robbery.

Therefore, Moe would be guilty of felony murder for the death of the armed guard.

Therefore, Moe may be convicted of first degree murder.

Murder of customer

Defined and discussed infra.

CONSPIRACY

Defined and discussed supra.

Co-Conspirator Liability: Pinkerton's Rule

Since Moe was a co-conspirator, he will be held liable for all crimes committed in furtherance of the conspiracy, including the murder of the customer since this crime was a foreseeable consequence of the conspiracy, i.e. the attempted robbing of Bank.

Therefore, Moe will be charged with the murder of the customer.

Robbery

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

Larry and Moe ordered Teller at gunpoint to give them a sack of money, thereby a trespassory taking of the personal property of another. Since they fled outside the bank with the money, they carried it away. The money was taken from Bank, of another. The taking did occur by force since Larry and Moe ordered Teller at gunpoint, thus the money was taken by force. The fact Larry and Moe fled with the money established their intent to permanently deprive Bank of its money.

Therefore, Larry and Moe committed a robbery.

Kidnapping

Kidnapping is the intentional, unlawful movement of another.

Larry and Moe fled the bank and noticed Curley had left. At that point they dragged a driver out from a nearby car. The movement of the driver without his consent was sufficient to establish an unlawful movement. Further, since the intent of Larry and Moe were to remove the driver from the car in order to obtain his car shows the movement of another.

Therefore, a kidnapping occurred.

Larceny

Trespassory taking and carrying away of the personal property of another with the intent to permanently deprive.

Larry and Moe took the driver's car and drove away. Thus, a trespassory taking occurred. Further, they left the bank with the money and dragged the driver out of a nearby car; hence, they carried away the personal property of another with the intent to permanently deprive.

Hence, the taking of the car shows that Larry and Moe had committed a larceny.

State v Larry

CONSPIRACY

Defined and discussed supra.

Co-Conspirator Liability: Pinkerton's Rule

Since Larry was a co-conspirator, he will be held liable for all crimes committed in furtherance of the conspiracy, including the murder of armed guard since this crime was foreseeable consequences of the conspiracy.

However, Larry will argue that killing of the armed guard was not foreseeable. The agreement was to rob Bank. However, the crime of murder is an act that is a foreseeable consequence of a robbery, thus the killing of a customer is within the scope of the conspiracy.

Therefore, Larry will be charged with the murder of the customer.

Murder of Customer

Murder defined supra.

As discussed once in the bank Larry noticed that the armed Bank guard was approaching them. Larry pulled out his gun and fired but missed and hit and killed a customer. Thus, an unlawful killing occurred.

Based on the facts seeing the armed Bank guard approach Larry, and Larry shooting at the guard missing but hitting and killing a customer establishes intent to kill. Larry will argue he intended to kill the guard, thus he had no intent. However, shooting a gun in a bank to prevent an armed guard from approaching you and killing a customer shows intent to cause great bodily harm.

Further, shooting a gun at anyone shows a reckless disregard for human life. Therefore, Larry's conduct was willful, wanton and reckless.

Lastly, Larry and Moe were in the perpetration of a robbery when he shot at the armed guard, missing, hitting and killing customer. Hence, the killing was done while in the commission of a felony, i.e. robbery

First Degree Murder

Defined supra.

As discussed the killing of customer took place while in the commission of a robbery. Hence, Larry will be charged with first degree murder.

Therefore, Larry will be convicted of first degree murder.

State v Curley

CONSPIRACY

Defined supra.

Although Curley was discussing plans to rob Bank with Moe and Larry he never agreed.

Only Moe and Larry agreed to rob Bank. Hence, no agreement. However, the prosecution will argue that when Curley was asked to drive Moe and Larry to Bank, in order for them to rob Bank, he did agree. In addition, he drove them to Bank. Thus, based on his conduct an implied agreement to rob Bank was formed. Therefore, there is an agreement.

As addressed the agreement was between Moe, Larry, and Curley, two or more. Further, they agreed to rob the bank. Therefore, the agreement was to do an unlawful act, i.e. robbery.

Therefore, Curley can be charged with conspiracy.

Withdrawal by Curley

Generally, withdrawal from the conspiracy is not a defense for the conspiracy, because the conspiracy is complete as soon as the agreement is made and act in furtherance is performed.

When Curley said he would think about robbing the bank, but decided to drive Larry and Moe to the bank in his car, an agreement was formed. Once at Bank, Curley decided to call the police on his cell phone and tell them about the ongoing crime. He then drove away. Although he will argue that he was trying to prevent the robbery, withdrawal is no defense to common law conspiracy. Modernly, since he took steps to thwart the crime a withdrawal could be found for the furtherance of the conspiracy. Curley did call the police, but this was after the customer and guard were killed. In fact, Curley did not thwart the crime since Larry and Moe succeeded in getting money and fleeing the bank. Thus, Curley's attempted withdrawal will not be a defense for the conspiracy charge since the conspiracy was completed upon the formation of the agreement. In addition, he can be charged with the other crimes under the Pinkerton's rule.