

**October 2004 Baby Bar
Question 1 – Criminal Law**

1. What legal justification, if any, did Dan have:

(1) Pursuing Al?

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.

Dan was pursuing Al because Al had just paid for the gun and ammunition with counterfeit bills, and upon Dan's discovery of the counterfeit bills Al grabbed the gun and ammunition and fled the gun shop. Thus, Al had stolen the goods from Dan, a crime. The fact that Dan chased after Al immediately after Al had stolen the goods indicates that Dan was in hot pursuit and that he was pursuing Al within a reasonable time after the crime was committed. Since Dan was a shopkeeper, he was not a police officer or other official charged with preventing any crime as part of his job duties.

Therefore, Dan was legally justified in pursuing Al.

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*, title to the gun and ammunition never passed to Al such that as Dan was pursuing Al down the street he was seeking to obtain the return of his property. Given that Al paid for the goods with counterfeit \$100 bills, Al committed a felony and Dan sustained harm as a result.

Therefore, Dan was legally justified in pursuing Al in order to defend his property under modern law. Since Dan was not defending his home, he will not be able to raise the defense of property as a legal justification for his actions in common law jurisdictions.

(2) Threatening Al with deadly force?

Justification – Prevention of Crime

Defined *supra*.

Under common law Dan has the right to use deadly force to prevent the perpetration of a felony. If this was a common law jurisdiction, even though Al had not loaded the stolen gun with ammunition when Dan initiated his pursuit of Al, Dan would be justified in threatening deadly force – firing a shot in the air and yelling that if Al did not stop, the next shot would kill him – because passing counterfeit bills is a felony.

In modern law jurisdictions, Dan could only use non-deadly force to prevent Al's crime. As such, Dan's threat of deadly force against Al exceeded the extent of force he lawfully could perform under the circumstances.

Thus, in modern law jurisdictions, there is no defense.

2. What crimes can Al be charged, and what defenses, if any, can he assert? Discuss.

Attempted False Pretenses

An attempted crime is the taking of a substantial step with the specific intent to commit a crime where one has the apparent ability to commit the crime. A substantial step is more than mere preparation, but less than perpetration of the crime.

When Al presented the counterfeit \$100 bills to Dan to purchase the gun and ammunition, he was falsely representing an existing fact that the bills were genuine. Al had tendered the counterfeit money and was completing the registration papers for the handgun purchase when Dan discovered the money Al gave him was counterfeit, he had taken a substantial step. Thus, Dan had the specific intent commit false pretenses, a crime. Moreover, Al had the apparent ability to commit the crime given the fact that he tendered the counterfeit money.

Thus, Al can be charged with attempt.

Larceny by Trick

Larceny by trick is where fraud is used to obtain possession rather than title.

When Al presented the counterfeit bills to purchase the gun and ammunition from Dan, he used fraud to obtain the goods. Further, because it does not appear that Al had completed the registration documents when he grabbed the gun and ammunition and fled the store, Al only obtained possession, not title to the goods.

Therefore, Al can be charged with larceny by trick.

Homicide

Homicide is the killing of one human being by another.

Since Al shot Dan and Dan was killed, there was the killing of a human being. Thus, a homicide exists.

Actual Causation

"But for" Al's act of loading the gun with the stolen ammunition and firing the gun and killing Dan, he would not have died.

Therefore, Al was the actual cause of Dan's death.

Proximate Causation

When Al loaded the stolen gun with ammunition and fired it toward Dan, it is foreseeable that the bullet would strike Dan and kill him. Thus, Al's conduct was the proximate cause of Dan's death.

Therefore, Al was the proximate cause of Dan's death..

Murder

Murder is an unlawful killing with malice aforethought.

Because Al shot and killed Dan as Dan was pursuing him after Al's theft of the gun and ammunition, the killing of Dan by Al was unlawful. Further, when Al loaded the cartridge into the pistol, turned and shot toward Dan, Al intended to shoot Dan to kill him.

Moreover, because Al killed Dan during the res gestae of a dangerous felony, larceny by trick as discussed supra, malice can also be established under the felony murder rule.

Therefore, Al will be charged with Dan's murder.

First Degree Murder

First degree murder is the intentional killing of a human being with malice aforethought. Malice aforethought can be established where the killing occurs during an inherently dangerous felony.

Since Al shot at Dan with a gun, a deadly weapon, it is apparent that he intended to kill Al when he shot him. Moreover, Al was committing larceny by trick when the killing occurred. Since Al was still in the res gestae of the crime, i.e., he had not reached a point of safety, the killing occurred during the commission of a dangerous felony.

Therefore, Al committed first degree murder.

Self-Defense

Deadly force may be used to protect life and limb when a person is threatened with imminent danger of deadly force.

Al will contend that he was threatened with imminent danger of deadly force by Dan because Dan was firing his pistol at Art as Dan was running after Al. Further, Dan yelled that if Al did not stop that Dan's next shot would stop Al, i.e., by striking and killing Al.

However, since Dan was justified in shooting at Al, as discussed supra, and Al knew that Dan was shooting at him for justified reasons – Al had just stolen a pistol and ammunition from Dan, this defense will fail.

Voluntary Manslaughter

Voluntary manslaughter is murder mitigated down to a lesser offense due to an imperfect defense. Under the circumstances Al will argue that while self defense will not be available as a complete defense to his murder of Dan, it still should apply as an imperfect defense to mitigate the murder to voluntary manslaughter. However, since Al had no right to self defense given that he should have stopped and given himself up once Dan told him to stop, having fired the first shot as a warning into the air, Al has not raised an “imperfect” defense. In fact, he is raised no defense at all.

Therefore, Al's murder of Dan will not be mitigated to voluntary manslaughter.