

**June 2005 Baby Bar**  
**Question 1 – Criminal Law**

**1. What crimes, if any, did Tom commit? Explain fully.**

**State v Tom**

**Attempted Robbery**

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

Tom's co-worker, Bill, reported Tom to the company's management for violating a company policy, and Tom was fired. In response, Tom was angered and decided to get even with Bill by robbing Bill. Thus, Tom had the specific intent to commit a robbery.

Expecting that Bill would follow the same route and schedule, Tom hid behind a newsstand near the bank where Bill was scheduled to make a pick-up intending to rob him. These acts show Tom performed a substantial step towards completion of the intended robbery.

The fact that Tom went out and bought a pistol, some ammunition, and a rubber mask to use as a disguise for the robbery shows Tom had the apparent ability to commit the robbery.

Tom hid behind a newsstand where Bill was scheduled to make a pick-up. However, by the time Tom had arrived at the planned location, the armored car had already had come and gone. These acts by Tom go beyond mere preparation, but is less than perpetration of the crime of robbery.

Thus, Tom can be charged with an attempted robbery.

**Factual Impossibility**

Factual impossibility is where the Defendant intends to violate the law but because of factors of which he is unaware there is no chance he will succeed in doing these things or causing the result. Factual impossibility is universally rejected as a defense to a charge of attempt.

Tom arrived at the location of his planned robbery, then hid behind a newsstand waiting for Bill. However, unbeknownst to Tom, Ajax had altered the pick-up schedule and the armored car had come and gone by the time Tom arrived. Since Tom arrived at the scene too late to rob Bill, and Bill had already picked up the money in the armored car from the bank, this makes it impossible for Tom to rob Bill. Thus, it was factually impossible for Tom to commit the robbery.

However, since factual impossibility is universally rejected as a defense, his inability to commit the attempted crime is no defense.

### **Attempted Murder**

The crime of attempt is defined supra.

When Tom missed his opportunity to rob Bill at the bank, he decided to make a bomb and plant it under the armored car driven by Bill. Tom bought a book that contained instructions for making a bomb. He also purchased the necessary explosives and detonation materials and began to assemble the bomb. By his actions Tom had the specific intent to murder Bill.

Tom's purchase of a book containing instructions for making a bomb, and the purchase of explosives and detonation materials evidences that Tom took a substantial step in perpetration of the making of the bomb in order to kill Bill.

The fact that Tom purchased a book on how to make a bomb and the materials to make the bomb, and began assembling the bomb, shows that Tom had the apparent ability to commit the crime of murder.

Tom began to assemble the bomb. While he was assembling the bomb, Tom inadvertently ignited the materials causing an explosion. Tom's acts go beyond mere preparation, but is less than perpetration of the crime of murder.

Thus attempted murder exists.

### **Arson**

Arson is the malicious burning of the dwelling house of another.

Tom decided to make a bomb. Further, he bought a book that contained instructions for making a bomb. Tom then purchased materials, including explosives and detonation materials. While assembling the bomb Tom inadvertently ignited the materials, causing an explosion and fire. Thus, Tom's conduct in burning the home was malicious.

The subsequent fire resulted in the owner's house burning down. Further, owner also resided at the home. Hence, the dwelling house of another.

Tom will be charged with arson.

### **Common Law Burglary**

Burglary, at common law, is the night time breaking and entering into the dwelling house of another, including the curtelage, with the specific intent to commit a felony therein.

Structures within the the curtilage of the home, such as a detached garage, can be subject to a burglary.

The facts are silent as to the time of day. Thus, no night time can be shown. Tom rented a room from the owner. Since Tom was a renter, there was no breaking when he entered the garage to begin making a bomb. Tom entered to make the bomb. Thus an entry. The home and its garage belonged to Owner, a dwelling of another.

At the time Tom entered into the home, he had purchased a book on how to make a bomb, as well as some explosives and detonation materials. Thus, he had the specific intent to make a bomb to kill Bill. Moreover, it is a felony to make a bomb when the intended purpose is to commit a homicide with the bomb. Thus, Tom had the specific intent to commit a felony within the garage when he entered. In light of the above argument, not all of the elements of a common law burglary are present.

Thus, no common law burglary occurred.

### **Modern law Burglary**

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

Tom rented a room from owner and entered the premises to make a bomb. Since he had rented a room, his entry was not trespassory. Tom entered the house, which is a structure. He entered with the intent to make a bomb in order to kill Bill. Thus, Tom's intent in entering the structure was in furtherance of committing murder, a crime.

However, since the entry was not trespassory, no modern law burglary occurred.