

**June 2009 Baby Bar
Question 3 Criminal Law
Model Answer**

Do the facts support each of the charges against Albert, Burt, and Chuck and what defenses, if any, might they each reasonably assert? Discuss.

State vs. Albert

Larceny

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

Albert removed boxes filled with guns from Walt's Gun Emporium. Albert was asked to help carry boxes to Chuck's car for \$10. Chuck had no authority to authorize the removal of the boxes. Hence, a trespassory taking and carrying away. The guns belonged to Walt. Thus, the guns were the property of another. When Albert removed the box of guns marked "Walt's Gun Emporium" and placed the box in the trunk of a red car owned by Chuck, Albert had the specific intent to permanently deprive Walt of his guns.

Thus, Albert committed larceny.

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.

Albert will argue he was given \$10 to help Chuck carry boxes to the red car. Albert had never seen Chuck or Burt ever before.

However, the box Albert placed in Chuck's car was clearly marked with the words "Walt's Gun Emporium". Albert should have known that at 3:00 am in the morning people do not transfer boxes of guns into their car unless an unlawful act is occurring. Albert should have been aware that the boxes did not belong to either Burt or Chuck.

Thus, mistake of fact is no defense.

Conspiracy

Conspiracy is an agreement between two or more persons with the specific intent to commit an unlawful act. At modern law you need an overt act.

Albert will argue Chuck gave him \$10 to help him carry some boxes to his car. There was no agreement to commit an unlawful act. However, based on Albert's conduct of helping Chuck take boxes that were marked "Walt's Gun Emporium" with the boxes coming from Burt, who is handing the boxes through a window at 3:00 a.m., his actions manifest an agreement. Thus, an agreement was formed. The agreement was between Chuck, Burt and Albert. Thus, it involved two or more persons. Albert, Burt and Chuck planned to take the boxes of guns and place them into the red car owned by Chuck in order for Chuck to obtain possession of the guns that belonged to Walt. Therefore, Albert, Chuck and Burt had the specific intent to commit an

unlawful act. Further, because the police observed Albert placing the box into the trunk of the red car, there was evidence of an overt act.

Therefore, Albert, Burt, and Chuck are guilty of conspiracy.

Co-Conspirator liability: Pinkerton's Rule for the Murder

A co-conspirator may be held liable for a crime committed in furtherance of the conspiracy that are the natural and probable consequence of the unlawful act and are foreseeable consequences thereof.

As argued above Albert, Burt, and Chuck were co-conspirators of the larceny. Further, when the police arrived onto the scene Chuck and the other co-conspirators fled in the red car. Chuck's actions reflect that he was trying to escape capture. It is foreseeable when an incomplete crime is discovered by the police that the perpetrators will try to flee to avoid being captured, which could result in death or injury of another. When Chuck's car hit another car and killed Vic, the act was committed in furtherance of the conspiracy which is the natural and probable consequence of the unlawful act, i.e., fleeing from the police.

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

Thus, Albert will be guilty of murder, to be discussed infra.

State vs. Burt

Larceny

Defined supra.

Burt removed boxes filled with guns from Walt's Gun Emporium. However, Burt was given authorization to open sealed boxes containing firearms, or to remove the boxes from the gun vault where they were stored. Since Burt had the authorization from Walt, the taking was with Walt's consent. Hence, Burt's taking was not trespassory. The prosecution will offer rebuttal and argue that Burt's authority was limited to take the guns out of the gun vault. Burt was not authorized to take the guns in the sealed boxes and climb out a window with them. Hence, Burt exceeded his authority. Therefore, there was a trespassory taking and carrying away. Further, the guns belonged to Walt. Hence, they were property of another. Burt removed the boxes of guns marked "Walt's Gun Emporium" and handed them out the store window in order for Albert to place the box into Chuck's car. Therefore Burt had the specific intent to permanently deprive Walt of his guns.

Thus, Burt committed larceny.

Conspiracy

Defined and discussed supra.

Co-conspirator liability: Pinkerton's Rule for the murder

As discussed supra, since Burt was a co-conspirator, he will be held liable for all crimes committed in furtherance of the conspiracy including the murder of Vic since this crime was foreseeable consequences of the conspiracy.

Thus, Burt will be guilty of murder, to be discussed infra.

State vs. Chuck

Larceny

Defined supra.

Chuck removed the box of guns from Walt's Gun Emporium and placed the box into his trunk of his car. Hence, a trespassory taking and carrying away. The box of guns belonged to Walt. Hence, it was the property of another. Chuck removed the sealed box of guns that belonged to Walt, and evident by his actions of fleeing from the police and having the police chase him, shows a specific intent to permanently deprive Walt of his guns.

Thus, Chuck committed larceny.

Mistake of Fact

Defined supra.

Chuck was under the belief that Burt owned the guns and he and Burt agreed to a purchased price of \$400 for the guns. Based on the facts, Chuck lacked the mens rea for the larceny, which is an unlawful act.

However, the prosecution will argue that his actions show otherwise. If he was under a mistaken belief that Burt owed the guns and was purchasing them from him, why would he flee and give chase to the police. Further, the box of guns found in his trunk of his car were clearly marked by a stamp stating "Walt's Gun Emporium". Since the box contained a name of the store, and that Burt was crawling in and out of the store's window, Chuck should have been aware that the guns did not belong to Burt.

Hence, mistake of fact is no defense.

Murder

Murder is an unlawful killing committed with malice aforethought. Malice aforethought can be evidenced through willful and wanton conduct or felony murder rule.

Chuck fled from the police and was involved in a car chase which caused him to hit another car killing Vic. Thus, an unlawful killing occurred. Chuck's act of fleeing from the police shows Chuck's reckless disregard for human life. Therefore, Chuck's conduct was willful and wanton.

Chuck will argue he was merely fleeing from the police and did not mean to hit anyone. The fact that the police gave chase which caused him to run into Vic's car, killing him was a mere accident.

However, the prosecution will rebut by Chuck's act of fleeing equates to a reckless disregard for human life. Thus, Chuck's conduct was wanton and reckless. Further, Chuck fled while in the perpetration of a felony, i.e. burglary.

Therefore, malice is established.

Chuck will be convicted of murder.

Actual Causation

"But for" Chuck fleeing from the police he would not have hit Vic's car and killed him.

Therefore, Chuck is the actual cause of Vic's death.

Proximate Causation

It is foreseeable that if you fleeing from the police and the police chase you in order to capture you that Chuck could lose control and hit another car. Thus, Vic's death is a foreseeable result of Chuck's conduct.

Therefore, Chuck is the proximate cause of Vic's death.

First Degree Murder

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

Chuck's act of fleeing from the police and hitting Vic's car which caused Vic's death is not a sufficient act to prove premeditation. Thus, Chuck did not have the requisite specific intent to kill Vic.

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.

When Chuck was fleeing from Walt's Gun Emporium with boxes of guns in his trunk of his car, he was still in the res gestae of the burglary. He had not reached a place of safety. When he was pursued by the police, which caused him to lose control and hit another car and killing Vic, Chuck was still in perpetration of the underlying crime of burglary. Burglary is one of the dangerous felonies under the Felony Murder Rule.

Therefore, Chuck would be guilty of felony murder for the death of Vic.

Thus, Chuck may be convicted of first degree murder.

Second Degree Murder

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

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

Involuntary Manslaughter

Involuntary manslaughter is the unintentional killing of a human being without malice.

As stated above, Chuck's act of fleeing from the police which caused him to hit another car killing Vic shows he acted only with criminal negligence, and with no intent to harm.

Thus, Chuck will argue he is not guilty of any killing of another more serious than involuntary manslaughter. However, since the requisite elements of murder can be found under the Felony Murder Rule, Chuck is guilty of first degree murder, not involuntary manslaughter.