

Question 3

Dan has been in and out of mental institutions most of his life. While working in a grocery store stocking shelves, he got into an argument with Vic, a customer who complained that Dan was blocking the aisle. When Dan swore at Vic and threatened to kick him out of the store, Vic told Dan that he was crazy and should be locked up.

Dan exploded in anger, shouted he would kill Vic, and struck Vic with his fist, knocking Vic down. As Vic fell, he hit his head on the tile floor, suffered a skull fracture, and died.

Dan was charged with murder. He pleaded not guilty and not guilty by reason of insanity. At the ensuing jury trial, Dan took the stand and testified that he had been provoked to violence by Vic's crude remarks and could not stop himself from striking Vic. Several witnesses, including a psychiatrist, testified about Dan's history of mental illness and his continued erratic behavior despite treatment.

1. Can the jury properly find Dan guilty of first degree murder? Discuss.
2. Can the jury properly find Dan guilty of second degree murder? Discuss.
3. Can the jury properly find Dan guilty of voluntary manslaughter? Discuss.
4. Can the jury properly find Dan not guilty by reason of insanity? Discuss.

Answer A to Question 3

1. Guilty of First Degree Murder First degree murder is a specific intent crime typically statutorily provided for.

Typically, first degree murder consists of: (1) intentional killing of a human, (2) with time to reflect upon that killing, and (3) doing so in a cool and dispassionate manner. Here, while there appears to be no statute that provides for first degree murder, it is unlikely that Dan would be guilty of first degree murder just the same.

Intentional killing An intentional killing is one done with specific intent to take the life of another. Here, the prosecutor will argue that Dan expressed a specific intent to kill Vic when he yelled he would kill Vic, which was accompanied by a striking of Vic with Dan's fist. Therefore, it is likely given Dan's express words of intent, the prosecutor will meet her burden of proving a killing by intent.

Time to Reflect Upon the Killing First degree murder requires time to reflect upon the killing. This is commonly known as premeditation. Premeditation, not in keeping with the lay person's understanding of it, however, requires merely a moment's reflection upon the killing. Here, the prosecutor will argue that Dan reflected upon the killing of Vic when he took the time to say to Vic, "I'm going to kill you."

However, Dan will argue that there was no time to reflect upon the killing of Vic because he "exploded" and then hit Vic. Such an intense anger coupled with a spontaneous statement "I'm going to kill you" will likely not be construed as sufficient time to reflect. Therefore, a jury should not properly find this element of the crime established.

Cool and dispassionate manner

The defendant must have committed the killing in a cool and dispassionate manner. That means that the defendant killed another person in a calm and calculated manner without passion. Here, the prosecutor will argue that Dan's action of striking Vic with his fist without an expression of sadness or fright may amount to cool and dispassionate.

However, such an argument is tenuous. Dan will successfully show that his actions were the result of an explosion, regardless of the reasonableness of those actions. Dan "exploded." This could hardly be construed as "cool." Therefore, a jury should not properly find this element of first degree murder established. In sum, a jury would not properly find Dan guilty of first degree murder.

Defenses

Even if a jury could find Dan guilty of first degree murder, such an offense will be subject to the defense of insanity (discussed below).

2. Second Degree Murder Second degree murder or common law murder is the intentional killing of a person with malice aforethought. Malicious intent will be implied by:

(1) the intent to kill a person, (2) the intent to inflict a substantial bodily harm on someone, (3) an awareness of an unjustifiably high risk to human life, and (4) the intent to commit a felony.
Intent to kill a person

As discussed earlier, Dan could be found to have intentionally killed Vic as evidenced by his expressed words "I'm going to kill you." While words alone are sufficient to manifest intent, this is a subjective standard and a jury will be allowed to look to the totality of the circumstances.

The jury will be able to consider that Vic told Dan that he was crazy and should be locked up, which aroused such anger that would negate a malicious intent. However, a jury could find that Dan intended to kill Vic by using words of that intent, coupled with an action that indeed killed Vic.

Therefore, Dan could properly be found guilty of second degree murder, malicious intent implied by the intent to kill Vic. Intent to Inflict Substantial Bodily Harm If Dan is not found to have the intent to kill, the prosecutor will argue that he did manifest the intent to inflict substantial bodily harm on Vic.

Here, Dan used his fist to strike Vic. The striking of another person could inflict substantial injury on another, depending upon where the person made the strike. Dan used his fist to strike Vic on the head, causing a fracture to his skull. The prosecutor will argue that Dan must have intended substantial bodily harm because striking a person in the head is a place of extreme vulnerability.

On the other hand, Dan will argue that people get into fistfights all the time, whether it be on the streets or boxing. He will argue that fistfights are a common way for people to work out their arguments and no substantial injury is intended.

This argument has little merit given the high susceptibility to injury from striking someone in the head. 21 Therefore, a jury could properly find that Dan intended to inflict substantial bodily harm. Awareness of an Unjustifiably High Risk to Human Life Again, the prosecutor will argue that even if Dan did not intend to inflict death or substantial bodily harm, surely Dan was aware of the high risk of human life. Here, the prosecutor will argue that Dan was aware of this unjustifiably high risk because striking another on the head with the force of fracturing his skull is a high risk of which Dan could be aware.

Therefore, a jury could properly find that Dan had an awareness of an unjustifiably high risk to human life. Felony Murder There is no evidence that Dan was intending to commit a felony, the intent from which can be implied to the killing of Vic.

Therefore, there would be no second degree murder based on an intent to commit a felony. In sum, a jury could properly find Dan guilty of second degree murder.

2. Voluntary Manslaughter

An intentional killing will be reduced to voluntary manslaughter by a provocation that arouses a killing in the heat of passion. Voluntary manslaughter consists of: (1) a provocation that would

arouse intense passion in the mind of an ordinary person, (2) the defendant in fact was provoked, (3) no reasonable time for the defendant to cool between the provocation and the killing, and (4) defendant in fact did not cool [sic].

Sufficient provocation Sufficient provocation to commit a killing is one that would arouse intense passion in the mind of an ordinary person. Here, Dan will argue that shouting to someone that they are crazy and should be locked up is sufficiently inciting to induce anger. This is subjectively true where Dan had spent so much time in and out of mental institutions.

He will argue that he was highly vulnerable to such insults. On the other hand, the prosecutor will rightfully point out that this is a reasonable person standard that does not take into consideration the surrounding circumstances. A reasonable person would not be incited to kill simply by an insult of insanity.

Based on this argument, the prosecutor will successfully refute Dan's attempt to reduce his killing to voluntary manslaughter.

That being said, the other elements appear to exist. Dan in fact provoked. Dan was in fact provoked when he "exploded" and simultaneously killed Vic. No reasonable time to cool between provocation and killing Dan immediately struck Vic on the head after the insult. There was no reasonable time to cool and Dan did not in fact cool [sic].

Insanity In order to be convicted of a crime, the defendant must complete a physical act (actus reus) contemporaneously with the appropriate state of mind (mens rea). Insanity is a defense to all crimes except strict liability because insanity negates the requisite intent necessary to be convicted of murder in all forms. Insanity is a legal defense that must be set out by applying the requisite elements as opposed to expert testimony of a psychiatrist. There are four theories of insanity a defendant may set forth and will depend upon which theory a jurisdiction adopts. All four theories will be discussed below to determine which, if any, are proper.

M'Naughten Test Insanity under this test is defined as the defendant was unable to understand the wrongfulness of his conduct and lacked the ability to understand the nature and quality of his acts. Here, Dan testified that the crude remarks were so incitant that he was unable to stop himself.

However, the prosecutor will argue that Dan showed his ability to understand the wrongfulness of his conduct because he shouted he would kill Vic. In addition, the mere fact of being unable to stop yourself implies that you indeed know it to be wrong but were unable to control yourself. Based on this evidence, Dan would not successfully raise a defense under this issue.

Irresistible Impulse Test

Under this test, the defendant may prove a defense of insanity if he shows he lacked the capacity for self-control and free will. Dan will probably be more successful to claim a defense of insanity under this test. As mentioned above, Dan "could not stop himself." This specifically evidences his inability to control himself. His will was subjugated by the insanity. Based on this evidence, Dan will likely successfully claim a defense of insanity under this test.

Durham Test

The Durham Test subscribes to the theory that a defendant will have an insanity defense if his unlawful conduct was the product of a sick mind. Dan will argue that he has spent much time in and out of mental institutions. Indeed, several witnesses testify as to Dan's history of mental illness. Such a history suggests that his conduct was a product of a sick mental condition rather than the product of his own free will.

Dan will likely succeed in bringing a defense of insanity under the Durham test.

Model Penal Code Test

Finally, under the test adopted by the Model Penal Code, a defendant's actions may be defended by way of insanity if he was unable to conform his actions to the requirements of the law.

Dan will offer his history of mental illness and continued erratic behavior despite treatment as a way to prove that he lacked the ability to conform himself to the requirements of law, i.e. not to kill.

This, however, seems to be a less compelling argument as Dan has been able to conform himself to the requirements of law in other aspects of his life. He was able to work in a grocery store and successfully stock the shelves. Because Dan appears to have the ability to conform his actions to the requirements of law in all other instances, the prosecutor will likely defeat Dan's claim of an insanity defense.

Answer B to Question 3

1. 1st Degree Murder

Murder is the killing of another human being with malice afterthought. The crime of murder is subdivided into degrees based on the intent of the accused.

First degree murder is the most serious of the degrees of murder. A person is guilty of first degree murder if the prosecution can show beyond a reasonable doubt that he killed someone with deliberation and premeditation; or, in jurisdictions that recognize the felony murder rule, if someone was killed as the foreseeable result of his act, or of the act of a coconspirator, during the course of an enumerated felony. This is the felony murder rule.

Felony Murder Dan will not be found guilty of first degree murder under the felony murder rule because he did not commit one of the underlying felonies. To be guilty under the felony murder rule at common law, the accused must have committed either rape, burglary, robbery, kidnapping, or arson, and the victim must have been killed during the commission of the crime (before the accused had reached a place of safety).

The facts indicate that this killing occurred as the result of either no crime, if he was insane, or a battery, because he struck Vic. Battery is not an enumerated felony. Hence Dan cannot be guilty of first degree murder under this theory. Premeditated and Deliberate Premeditation requires that decision to kill have arisen when the accused was acting in a cool, composed manner, with sufficient time to reflect upon the killing.

Deliberateness requires that the accused had the intent to kill when he engaged in the act that resulted in the death. The facts indicate that Vic [sic] was stocking shelves before Vic encountered him. There is nothing to indicate that he had any animosity towards Vic prior to the incident, or even knew Vic. The facts indicate instead that Dan punched Vic after he exploded in anger in response to a comment Vic made.

Vic's death resulted from a skull fracture caused by his impact with the ground. At no time do the facts indicate that Dan calmly and coolly reflected on killing Vic. In addition, it is not clear that he had the intent to kill Vic, as he only hit him once, an act that does not usually cause death. Although he shouted that he would kill Vic right before he killed him, the jury could likely not find that this shouting alone immediately before throwing the punch was enough.

Moreover, it does not evidence a cool dispassionate manner, but instead, evidences the opposite. Therefore, because Dan's actions appear neither premeditated nor deliberate, he will likely not be found guilty of first degree murder. Dan will also have the defense of insanity, discussed below, and the defense of diminished capacity if the jurisdiction recognizes it. Under diminished capacity, Dan will have to show that a disease of the mind prevented him from forming the intent required, even though it did not raise to the level of insanity.

2nd degree murder Second degree, at common law, murder is the killing of a human being with malice afterthought. The mens rea of malice is satisfied when the accused intended to kill, intended to cause great bodily injury, showed a reckless disregard for an unjustifiably high risk of death, or killed during the commission of a rape, burglary, robbery, kidnapping, or arson. Because there is no issue as to the cause of Vic's death, the prosecution's issue will be in proving that Dan killed with malice and not in the heat of passion, as discussed in section 3 infra, then it cannot convict him of murder because he will have lacked the intent, and therefore must instead convict him of manslaughter.

Again, Dan will also have the defense of insanity, discussed below. Intent to kill - As discussed above, the jury will likely not be able to find that the facts show that Dan formed the intent to kill Vic because the facts indicate that Dan was in a rage when he punched Vic. Although Dan's testimony that he had been provoked to violence does not absolutely show that he lacked the intent to kill, if the provocation would have caused a reasonable person to become enraged, and did cause him to become enraged, and there was not enough time for a reasonable person to calm down, and Dan did not in fact calm down, then the jury will not be able to conclude that he had formed the intent to kill at the time he punched Vic. [

However, if the jury finds that Dan's passion was not reasonable, or he was not in the heat of passion, it could conclude that he intended to kill Vic because he shouted that he would kill Vic right before he killed him. However, Dan's actions are not consummate with the intent to kill. He only hit Vic once. He did not stomp his head in when he hit the ground or hit Vic with a weapon. Consequently, even if Dan was not in passion, it is likely that the jury would not find he had the intent to kill. Intent to cause bodily harm –

As discussed above in the intent to kill, it is likely that the jury would not find that Dan had formed the proper intent to cause bodily injury at the time he hit Vic because of his passion. Because it is the formation of the intent that matters, if Dan did not have the state of mind necessary to formulate the intent to cause substantial bodily injury because he was in the heat of passion as a result of the provocation, he cannot be found guilty under this theory either.

However, if the jury does not find that the he [sic] satisfies the requirements for finding heat of passion, then it is likely that they will convict him for murder under this theory of malice. Not only did Dan yell that he intended to kill Vic, but Dan punched Vic, which is an act that presented the likely result of causing serious bodily harm. Thus, unlike above where he did not take an act that was likely to kill, Dan took the requisite act here. Thus, the jury could more reasonably find that he intended to cause great bodily harm when he punched Vic and because Vic died as a result of that action, Dan is guilty of murder. Reckless disregard for an unjustifiably high risk to human life - To convict Dan under this theory, the jury would have to conclude that Dan appreciated the high risk of death caused by his actions, and that he proceeded to engage in reckless conduct in the face of it. As discussed above, if Dan was in the heat of passion, the jury cannot find that he appreciated the unjustifiably high risk of his actions, and thus cannot convict under this theory.

However, if the jury does not find that he acted in the heat of passion, then it would be possible to convict under this theory because Dan should have known that punching Vic could cause him to die, and Dan engaged in the actions anyway.

Felony murder - As discussed above, battery is not one of the crimes that satisfies felony murder, so he cannot be found guilty under this theory. Dan will have the defense of insanity, discussed below. 3. Manslaughter To find Dan guilty of voluntary manslaughter, the jury will have to find that Vic's provocation would have caused a reasonable person to become enraged, that it did cause Dan to become enraged, that there was not enough time for a reasonable person to calm down between the time the comment caused Dan to be enraged and the time he hit Vic, and that Dan did not in fact calm down during that time.

Although manslaughter is sometimes thought of as a defense, it is not Dan's burden to prove these elements. Instead, the prosecution must show the lack of a heat of passion killing in order to establish the necessary intent to convict Dan of either 1st Degree or 2nd Degree murder, as discussed above. Reasonable person - The first test is whether a reasonable person would become enraged. The typical instances are when someone finds his spouse in bed with another. Here, there was a simple altercation between Dan and Vic. Vic complained that Dan was blocking the aisle. Dan swore at Vic in response and threatened to kick him out of the store. Vic told Dan that he was crazy.

Dan flew into a rage and punched Vic. Vic died. The jury would likely find that these facts do not meet the requirement for a heat of passion killing because a reasonable person does not fly into a rage because someone else tells them [sic] they [sic] are crazy during an altercation that they [sic] escalated. A reasonable person would expect the other party to make a snide comment in response to being sworn at by a store employee who might have been blocking an aisle. If the jury finds that a reasonable person would not have become so enraged as to have punched Vic under the circumstances, then Dan will not be convicted of the lesser crime of manslaughter and will instead likely be convicted of 2nd degree murder, as discussed above. Dan's particular mental issues or state of mind is [sic] irrelevant for this test. This is an objective test; it is based on what the reasonable person would do.

Thus it is irrelevant if Dan is particularly sensitive to comments about being crazy; he only gets this defense if the comments would have engendered passion in a reasonable person. Dan's passion - If the jury finds that a reasonable person would have been enraged by Vic's actions, then the next issue is whether Dan did. The facts are pretty clear on this point.

They state that Dan exploded in anger, shouted he would kill Vic, and then punched him. This is exemplary of enraged behavior; therefore, the jury will almost certainly find 27 that Dan was enraged. Cooling off time for a reasonable person - If the jury finds the first two elements are satisfied, they must also find that there was not enough time for a reasonable person to cool off between the provocation and the act. The facts indicate that the entire event occurred in a very short period of time, although it does not specify how long.

Had Vic or Dan left the scene of the altercation, or had someone else intervened such that there was a delay between the exchange of words and the punch, then the jury could find that there

was time to cool off. However, because the facts do not show any appreciable time lapse, the jury will likely conclude that a reasonable person would not have had time to cool off. Dan did not cool off - Finally, the jury must find that Dan did not cool off.

The facts are pretty clear on this as well, since he punched Vic immediately after going into his rage.

Thus the jury will likely find this is the case. Dan will have the defense of insanity here as well, discussed below. Insanity All jurisdictions recognize an affirmative defense of insanity, although there are four different theories across the various jurisdictions. Because it is an affirmative defense, the accused has the burden of proving by preponderance of the evidence that he met the test for insanity at the time in question. His sanity at the time of trial is not an issue. The evidence that supports Dan's defense of insanity is that he has been in and out of mental institutions most of his life, that he has erratic behavior, and that he could not stop himself from striking Vic. These facts tend to show that he has a mental disease that affects his ability to conform to the law, which is at the heart of all four of the insanity tests.

M'Naughten Rule - Under the M'Naughten Rule, an accused is not guilty by reason of insanity if, because of a disease of the mind, he lacks the capacity to understand the wrongfulness of his acts or cannot appreciate the character of his actions. This is basically a test of whether the defendant's mental disease prevents him from understanding right from wrong.

The facts indicate that the jury could find that Dan has a disease of the mind because he has a history of mental illness and engages in erratic behavior. Dan's testimony explaining the punch, however, was that he could not stop himself from striking Vic.

He did not indicate that he did not understand that he was striking Vic, or that striking Vic was wrong. Instead, he struck Vic because he could not control himself. Consequently, if the jurisdiction uses this test, then it cannot find him not guilty by reason of insanity. Irresistible Impulse Test - Under this test, an accused is not guilty by reason of insanity if, because of a disease of the mind, he cannot exercise the self-control to conform his actions to the requirements of the law. The facts indicate that the jury could find that Dan has a disease of the mind because he has a history of mental illness and engages in erratic behavior. Dan also testified that he could not stop himself from striking Vic; in other words, he struck Vic because he could not control himself.

Consequently, if the jurisdiction uses this test and the jury believes that Dan could not stop himself from striking Vic, and that the reason he could not do so was because of his mental illness, then it should find him not guilty by reason of insanity. Durham Rule - Under the Durham Rule, an accused is not guilty by reason of insanity if the mental disease is the actual cause of the criminal act. In other words, if the act would not have been done "but for" the disease, then he is not guilty. The facts indicate that the jury could find that Dan has a disease of the mind because he has a history of mental illness and engages in erratic behavior.

Consequently, if the jurisdiction uses this test and the jury believes that the reason Dan could not stop himself from striking Vic was because of his disease of the mind, then it should find him not

guilty by reason of insanity. However, if it finds that the mental disease was unrelated to the reason he could not stop himself from striking Vic, then it should not find him not guilty by reason of insanity. Model Penal Code Test - Under this test, an accused is not guilty by reason of insanity if, because of a disease of the mind, he is unable to appreciate the criminality of his conduct, or to conform his actions to the requirements of the law.

This is basically a blend of the M'Naughten Rule and the irresistible impulse test. As discussed above with regards to the latter, if the jurisdiction uses this test and the jury believes that Dan could not stop himself from striking Vic, it should find him not guilty by reason of insanity. Therefore, if the jury uses the irresistible impulse test, the Durham rule, or the MPC test, it could properly find Dan not guilty by reason of insanity. If it uses the M'Naughten rule, it could not.