

ESSAY QUESTIONS AND SELECTED ANSWERS

JUNE 2002 FIRST-YEAR LAW STUDENTS' EXAMINATION

This publication contains the essay questions from the June 2002 California First Year Law Students' Examination and two selected answers for each question.

The answers received good grades and were written by applicants who passed the examination. The answers were typed as submitted, except that minor corrections in spelling and punctuation were made for ease in reading. The answers are reproduced here with the consent of their authors and may not be reprinted.

Applicants were given four hours to answer four essay questions. Instructions for the essay examination appear on page ii.

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ESSAY EXAMINATION INSTRUCTIONS

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines which are not pertinent to the solution of the problem.

You should answer the questions according to legal theories and principles of general application.

QUESTION 1

Debbie and Jon met in college and dated each other for two years. Debbie loved Jon very much and wanted to marry him. Jon always told her that he loved only her, but he told her he thought they were too young and should not rush into marriage.

One day as Debbie was putting gasoline into her car at the gasoline station, she looked into the car parked next to hers. She was enraged to see her best friend Vickie passionately kissing Jon. Debbie walked over to the car, with the fuel dispenser in her hand, and started yelling at Vickie and Jon. Vickie said, "I'm sorry you had to find out this way. Jon and I love each other and are going to get married."

Debbie was enraged and shouted, "You're not going to marry anyone, you slime!" She then pointed the gasoline dispenser at Vickie and sprayed her with gasoline, soaking her hair and clothes. Jon reached over to try to help Vickie. Unfortunately, he was smoking a cigarette. The cigarette ignited the gasoline and Vickie burned to death.

What offense or offenses has Debbie committed and what defenses, if any, would she assert? Discuss.

ANSWER A TO QUESTION 1

STATE v. DEBBIE

1) Assault

An assault is an act which causes an immediate apprehension of a harmful or offensive contact.

In this case, the state may argue that when Debbie pointed the gasoline dispenser at Vickie, while shouting at her, Vickie could have reasonably apprehended an unlawful and offensive contact, i.e., being sprayed with gasoline.

Debbie has committed an assault.

2) Battery

Battery is an act which causes a person to suffer a harmful or offensive contact.

The state may argue that spraying Vickie with gasoline, soaking her hair and clothes, constituted a harmful and offensive contact.

Debbie has committed a battery, but it will merge with the crimes discussed below.

3) Homicide

Homicide is the death of a human being, which is caused by another human being.

In this case, Vickie was burned to death, so there is a death of a human being.

4) Actual Cause

But for Debbie's act of spraying Vickie with gasoline, she would not have been burned to death, so Debbie is the actual cause.

5) Proximate Cause

The state will argue that a personal being burned to death is the foreseeable result of spraying them with gasoline.

Debbie will argue that it was Jon's cigarette that ignited her clothes, which constitutes an independent intervening act which broke the issue of causation.

Debbie's argument will fail, especially if she could in some way tell that Jon was smoking a cigarette, i.e., saw smoke or smelled smoke.

Debbie is the proximate cause of Vickie's death, and is therefore responsible for her homicide.

6) Murder

Murder is an unsuccessful homicide, with malice aforethought.

Malice is established by showing:

- 1) An intent to kill, or
- 2) An intent to cause great bodily injury, or
- 3) The death resulted from an awareness of and conscious disregard for a high risk to human life, or
- 4) The death resulted during the commission of an inherently dangerous felony.

There is a homicide as discussed above. In this case, the state may argue that when Debbie yelled, "You're not marrying anyone, you slime," and then sprayed Vickie with gasoline, she demonstrated an intent to kill, or an intent to cause great bodily harm.

The state may also argue that by spraying gasoline onto a person, Debbie demonstrated an awareness of and disregard for a high risk to human life (Depraved Heart).

The state will be able to establish malice.

7) First Degree Murder/Second Degree Murder

Murder that is willful, deliberate and premeditated is First Degree Murder, Second Degree is other types of murder.

If the state can convince a jury that in the brief seconds between seeing Jon and Vickie and spraying her with gas, Debbie decided to kill her, They will establish First Degree Murder.

The state will have a difficult time showing that Debbie reflected upon her act, so she has probably committed second degree murder under a depraved heart theory.

8) Voluntary Manslaughter

Voluntary manslaughter is an intentional killing of a human being, where malice is mitigated by adequate provocation.

To be adequate, the provocation must be sufficient to enrage the passion of a reasonable person, and the defendant must actually be provoked.

Additionally, there must not have been enough time for a reasonable person to “cool” down, and the defendant must not have actually “cooled” down.

If the state cannot prove murder, it may argue that Debbie intended to kill Vickie, but that she was provoked by seeing Jon and Vickie passionately kissing in the car next to her. Seeing a boyfriend kiss your best friend is sufficient to enrage the passion of a reasonable person, so Debbie's provocation is reasonable.

Additionally there was a break in time between Debbie witnessing the incident and her actions so she did not cool down, nor is there sufficient time for a reasonable person to cool down.

Debbie has committed voluntary manslaughter, if the state can show an intent to kill.

9) Involuntary Manslaughter

Involuntary manslaughter is an unintended homicide that results from criminal negligence, or the commission of an unlawful act, not amounting to an inherently dangerous felony.

Debbie may argue that at most she has committed an involuntary manslaughter, because she did not intend to kill Vickie, and that Vickie's death resulted from Debbie's criminal negligence or the commission of a battery.

If Debbie did not intend to kill, she may have committed an involuntary manslaughter.

10) Attempted murder—Jon

An attempt is a substantial step beyond preparation toward the commission of a crime, with the specific intent that the crime be committed.

The state may argue that when Debbie sprayed gas on Vickie, while Jon was seated next to her, smoking a cigarette, she took a substantial step toward killing Jon also.

However, there are no facts to suggest that Debbie intended to kill Jon, so the state will not be able to prove an attempted murder of Jon.

ANSWER B TO QUESTION 1

State vs. Debbie

State could charge Debbie for criminal assault, battery, and murder (with possibility of first degree murder) as well as involuntary manslaughter.

_____ Murder

Issue — Can Debbie be charged with murder of Vickie?

Under criminal law, murder is unlawful homicide, killing of a human being by another, with malice aforethought.

Malice can be found if there is (1) intent to kill, (2) intent to cause great bodily injury, (3) commission of a dangerous felony, felony murder rule, and (4) act with awareness of and disregard for the unjustified risk to human life. The depraved heart murder rule.

Here, this is a killing because Vickie, a human being, died due to the act of another human being, Debbie. The killing is unlawful because it is not justified.

Here malice can also be found because Debbie pointed the gasoline dispenser at Vickie and “sprayed” gas on her. This act can be construed as “intent to kill” because gasoline is a dangerous substance and everyone knows it would cause death if ignited. Also, there is an intent to cause great injury because even if not ignited, the chemical feature would cause injury to the people.

Therefore Debbie can be charged with murder of Vickie.

Further, if Debbie's act can be construed as deliberated and premeditated, she could also be charged with "First degree murder."

Causation

Under criminal, the death of the victim must be actually and proximately caused by defendant's act.

Actual causation is determined by "but for" test. Here, but for Debbie's act, Vickie would not have died. Therefore she actually caused Vickie's death.

Proximate causation is determined when the result is foreseeable and there is no superseding intervening event to break the chain of causation. Here, Debbie could argue that Jon's smoking of a cigarette is a superseding event and therefore had broken the chain of causation. However, State would argue that Jon's smoking is foreseeable even if it was unreasonable and spraying gasoline on a person could cause death is also foreseeable.

Therefore, Debbie both actually and proximately caused death of Vickie. Therefore Debbie can be charged with murder.

Battery

Can Debbie be charged with criminal battery?

Under criminal law, battery is intentional causing harmful or offensive touching.

Here there is an intentional act because Debbie "sprayed" gasoline on Vickie. There is also a touching, because gas was put on Vickie by Debbie. There is also

a harmful and offensive touching because gasoline is dangerous and [to] be sprayed in public is offensive.

Therefore, Debbie can be charged with Battery.

Assault

Issue — Can Debbie be charged with criminal assault?

Under criminal law, assault can be either attempted battery or attempt to cause apprehension of a battery.

Here, there is an attempt to cause apprehension because Debbie “shouted” with “gasoline dispenser in her hand.” This would cause a reasonable person to apprehend an offensive or harmful touching.

Therefore, Debbie can be charged with criminal assault.

Involuntary Manslaughter

Issue — Debbie can be charged with involuntary manslaughter?

Under criminal law, involuntary manslaughter is an unintentional killing without malice aforethought done with criminal negligence. Gross reckless or killing during a malum in se felony is not enough to charge for felony murder.

Here, Debbie could also be charged for involuntary manslaughter because her conduct is grossly reckless, i.e., spraying gasoline on another person and caused death.

Therefore, Debbie can be charged with involuntary manslaughter.

Defenses

Mitigation

Issue — Can Debbie mitigate her killing to voluntary

Manslaughter by claiming provocation?

Under criminal law, voluntary manslaughter is an intentional killing without malice aforethought done with adequate provocation: (1) Provoked if it is a reasonable person. (2) Defendant provoked. (3) Not time for cooling down. (4) Defendant did not cool down.

Here, Debbie would argue that she was provoked because she saw Vickie “passionately kissing” Jon, Debbie's boyfriend, and she was “enraged” to see this.

There is also no time to cool down because it happened when Debbie was adding gas, a very short period of time.

Therefore, Debbie would be successful to claim “heated passion” killing and mitigate her crime down from murder to voluntary manslaughter.

Insanity

Under criminal law, insanity is a defense if it negates a required mental state element of the crime charged. Under M’Naghten test, if due to mental disease the defendant did not know what she was doing was wrong, she could be found insane. Under irresistible impulse test, if defendant knew what she was doing was wrong but could not stop herself she can be found insane.

Here, Debbie could claim that she was in “shock” and became “temporarily insane” and “could not control herself when she did what she had done.” However,

there is unlikely [sic] she would be successful to raise this defense because there is [sic] no facts to support this claim.

Therefore, Debbie could not successfully use the defense of insanity.

QUESTION 2

Buyer opened a new automobile service station earlier this year. Buyer wanted to buy a television set for the station so her customers could watch television while she worked on their cars.

Buyer found the television set she wanted at Seller Sets, Inc. ("Seller"), a television set retailer. A Seller salesperson told Buyer she could purchase the set for \$300. Buyer replied that she would like to "shop around". The salesperson then wrote "Seller Sets, Inc.– \$300" on a sales brochure describing the set and gave the brochure to Buyer. The printed phrase "Available for a Limited Time Only" appeared at the top of the brochure. As the salesperson handed Buyer the brochure he said, "I think you'll find no one will beat our price."

Not finding a better price, Buyer returned to Seller's one week later to buy the television set. However, the salesperson told her that the set was out of stock and that Seller could not sell her another at the \$300 price. Two months later, Buyer purchased the same model set from another dealer for \$450.

Buyer wishes to sue Seller, seeking damages for lost profits. Buyer intends to allege that she lost customers because she has not had television in the station for the past two months.

What theory or theories for recovery of damages will Buyer assert in her complaint and what is her likelihood of success on each theory? Discuss.

ANSWER A TO QUESTION 2

- I. What law applies: Uniform Commercial Code (UCC) or common law?

The UCC is the governing law for the sale of goods. Goods are movable items and do not include services, real estate, or intangibles.

Here, the governing law is the UCC.

2. Is Seller a merchant as defined by the UCC?

The UCC defines merchant as someone who trades the types of goods in question or holds themselves out to be knowledgeable regarding the goods.

Here, Seller is a television set retailer and is clearly a merchant.

Note: Seller's salesperson, since acting within the scope of her/his employment, binds Seller Sets, Inc. to any contracts/offers, etc., that she makes (respondeat superior).

3. Did Buyer and Seller have a contract for the sale of a TV set for \$300?

A contract consists of an offer, an acceptance, and consideration. An offer is a manifestation to be presently found or committed, communicated to specific offerees, with definite subject matter and material terms. Under the UCC, quantity and subject matter are generally the only two terms required.

Offer

Here, the salesperson clearly offers Buyer the television set for \$300.

Acceptance

Acceptance is the manifest willingness to be presently bound to a valid offer. It can be express or implied. Under the UCC acceptance can occur by a means stipulated by the offer, or if no such means is provided, in any reasonable manner.

Here, Buyer clearly does not accept Seller's offer because Buyer states that she would like to "shop around."

Therefore, as of the time of the Buyer's first visit to Seller Sets, there is no contract between Seller and Buyer.

4. Did Seller make a Merchant Firm Offer to Buyer?

Under the UCC, an offer can remain open if supported by consideration (an options contract) or if a merchant firm offer is made. A merchant firm offer occurs when a merchant makes a signed writing to keep an offer open. The offer remains open for the stated period of time not to exceed three months or for a reasonable period of time if no time is stated, again not to exceed three months.

Here, Seller is a merchant as discussed above. Seller wrote on the T.V. sales brochure that described the set "Seller Sets, Inc. \$300." Buyer will argue that this is a signed writing because of Seller's handwritten note. Seller, on the other hand, will argue that Seller's writing is not a signature. In general, the UCC favors contracts and a trier of fact may determine that Seller's handwritten notes with the words "Seller Sets" constitutes a signing.

Here, no specific time is given for the length of the firm offer. Seller will argue that the printed phrase "Available for a limited time only" suggests only for a period of time in which Seller has inventory. Also, this phrase suggests

a short period of time. Buyer, on the other hand, would argue that one week, the time in which the Buyer returned, is within a “limited time” and furthermore one week is within a reasonable time as contemplated by the UCC, which cuts off firm offers without consideration at three months. Because one week is a reasonable time for holding open an offer to sell a TV, Seller must keep its offer open for one week.

Therefore, Seller gave Buyer a merchant firm offer that was open for at least one week.

Detrimental Reliance

In the event that Seller was not found to have made a merchant firm offer, Buyer may argue that she detrimentally, reasonably, and foreseeably relied upon Seller's statement that T.V.'s at \$300 would be available.* If so, this detrimental reliance in effect provides the consideration to keep Seller's offer open.

*Here, in addition to the facts pertaining to the merchant firm offer, Seller says Buyer will not find anyone that can beat Seller's price.

5. What damages can Buyer recover if Seller violated its merchant firm offer?

Assuming a merchant firm offer was made by Seller that stayed open for a week, Seller broke that offer when Buyer returned a week later to purchase the TV (Salesperson tells Buyer TV out of stock and could not sell Buyer one at \$300.)

Expectation Damages

Parties to a contract are awarded expectation damages—damages to make them whole so that they receive the benefit of their bargain. Under the UCC, when a seller breaches, by not providing the goods to buyer, buyer can cover, that is purchase an identical or equivalent good and the seller owes the buyer expectation damages equal to the difference in prices.

Here, Buyer covers her purchase by buying an identical TV two months later at a \$150 increase in price (\$450 - \$150). Seller may argue that Buyer waited too long to cover herself and, if TV prices increased during this time, Seller should not have to pay for such increases. Here, there are no facts to support this and therefore Seller owes Buyer \$150 in expectation damages.

Consequential Damages

Consequential Damages may be awarded to the non-breaching party if at the time of contract formation (in this case the merchant firm offer) the non-breaching party makes clear to the breaching party that there are special circumstances that would not be obvious that would cause harm if the contract were breached.

Here, Buyer does not tell Seller that the TV is necessary to retaining customers at Buyer's service station, and Seller would have no reason to know this. Furthermore, Buyer could have covered much sooner than two months in order to mitigate damages (that is, loss of customers to the service station). In addition, Seller would argue that Buyer's consequential damages

are too speculative, too remote, and cannot be reasonably determined by a court because it would be hard to determine whether the lack of a TV resulted in a specific number of customers not using Buyer's service station.

Therefore, Buyer will not recover consequential damages.

ANSWER B TO QUESTION 2

I. Governing Law—UCC or Common Law?

If Buyer can establish that a contract exists, it will be governed by the UCC because this is a contract for the sale of goods, a TV (a movable object).

II. Do the parties have a contract?

A. Has there been an offer?

Seller is a party that deal in “goods of the kind,” and as such is defined within the UCC as a merchant. Specifically, Seller is a TV set retailer, as stated in the fact pattern. Therefore, the special rules for merchants' offers will apply. The salesperson for Seller, as an agent of Seller, has provided Buyer with a brochure describing the set, and salesperson wrote “Seller Sets, Inc.—\$300” on the brochure. Thus, the elements of a Merchant's Firm Offer are established: 1) price, 2) quantity (implied to be one), 3) description of the product stated with specificity, and 4) signed by the merchant. The courts have held that a written or printed business name on the estimate or brochure may be held to construe a signed offer. Further, under the objective theory of contracts, the brochure and statements made by salesperson would induce a reasonable person to believe that had the power to presently accept Seller's offer to sell one TV for \$300. Under the Merchant's Firm Offer rule, the merchant must hold the offer open to the offeree for a “reasonable time,” not to exceed 3 months. Therefore, it would appear that there has been an offer.

B. Is the offer still open?

As stated supra, under the Merchant's Firm offer rule, the merchant is required to hold an offer open for a reasonable amount of time. Under these facts, Seller had reason to know that Buyer intended to "shop around" a bit, and this is the reason Seller's salesperson provided the brochure. The words, "Available for a Limited Time Only" appeared on the brochure. Thus, when Buyer returned to purchase the set he may have believed that this was within the "Limited Time." Since this is an ambiguous statement as to how long the offer will remain open, it will be up to the court to determine if Buyer acted reasonably. Ordinarily, a merchant's firm offer must be held open for a period not to exceed 3 months unless unambiguously stated in the offer. Seller's offer is ambiguous on its face, and this will be an issue for the court.

C. If the offer is still open—

If the court rules that one week was a reasonable time in which Buyer could return and expect to be able to accept Seller's offer, then her act of returning to the store prepared to make a perfect tender to purchase the set would have been an acceptance on Buyer's part. Thus, a contract would have been formed.

D. If the offer was no longer open—

If the court rules that it would be unreasonable for Buyer to expect to be able to purchase the set one week later, in light of the fact that the brochure clearly indicated the special price was available for a limited time only, Buyer's actions would be construed as an ineffective attempt to accept the offer. Under these facts, no contract would have been formed.

III. If Buyer was reasonable in returning to the store one week later to purchase the set, offered perfect tender, and expected to make a contract with Seller for one TV, she has accepted the contract. When she was informed by Seller that there were no more in stock, this was, in effect, a breach on the part of Seller. Since it went directly to the essence of the contract (the TV), it is a material breach on the part of Seller. Thus, Buyer could reasonably sue for damages.

Under the Merchants' Firm Offer rule, which appears to be in effect here, it is likely that the court will rule in favor for Buyer as to whether the Seller should have expected his brochure to induce reliance on the part of Buyer. A reasonable person in Buyer's position would expect that he would be able to accept the offer and form a contract with Seller. Thus, Buyer will be owed some damages based on his reliance on Seller's statements.

A. Reliance—Compensatory Damages

Buyer will first state that based on her reliance on Seller's offer, she expected to be able to purchase this model of TV for \$300. Ultimately, she had to pay \$450 for the same model. Thus, she should be compensated for the difference in what she actually paid and what she would have paid had the contract with Seller not been breached. This amount, \$150, is her compensatory damages. Buyer would be under an obligation to mitigate her damages, and there are no facts presented to indicate either that she did or did not. The fact that she waited two months to make the purchase of a TV set, that it was the same model and that it was 50% more expensive would all be factors for the court to consider in determining if Buyer was reasonable in her attempt to mitigate her damages. She seems to have a strong case, given her reliance on a merchant's firm offer.

B. Lost profits

Damages for lost profits must be established with reasonable certainty, and are designed to place the plaintiff in the position they would have been in had the contract been adequately performed. Here, that would mean, if Buyer had been able to purchase the TV set from Seller as originally desired, how would that have affected her business profits? Typically, lost profit damages are very difficult to establish absent significant historical data to indicate some trend or pattern. Since this was a new business, for Buyer, it will be especially difficult for her to establish with the requisite specificity exactly how her business was harmed by the lack of a TV in the waiting area of the station. Therefore, it is unlikely that she will recover damages for lost profits.

IV. Seller's Defenses to whether there is a contract—

Buyer will be owed nothing if Seller can prove that there was no contract. This might be achieved in either of two ways: 1) That Buyer's reliance was unreasonable, and 2) claiming the statute of frauds as a defense to formation.

A. Buyer's unreasonable expectation to contract

As discussed supra, whether Buyer's expectation that she could presently accept Seller's offer via the brochure is a matter for the court. Seller will argue that the printed "Limited Time Only" should not have induced any reliance on Buyer's part that she could expect to return one week later and purchase the TV set.

B. Statute of Frauds

Seller may raise an issue with the statute of frauds, but this would be ineffective, since the Statute of Frauds provision applying to goods is applicable only to goods of \$500 or more. The TV was offered for \$300, and therefore, is outside the Statute of Frauds.

QUESTION 3

Anna owned a business and stored insured business inventory at a warehouse owned by Bob. Anna was experiencing financial problems and needed funds to pay her creditors. Bob, after hearing of Anna's money problems, suggested that they hire someone to burn down the warehouse since he was planning to build condominiums on the warehouse property and could use the insurance proceeds for the construction of the condominiums. Bob told Anna that he knew someone who would handle burning the warehouse in return for a percentage of the insurance proceeds. Anna agreed and Bob contacted Cindy to burn down the warehouse. Cindy obtained the location of the warehouse from Bob and proceeded to set fire to the warehouse. Unbeknownst to Anna, Bob or Cindy, a homeless person, Daryll, was living in the warehouse. Daryll died as a result of the fire.

After hearing about Daryll's death, Anna and Bob decided not to make any insurance claims. After an investigation Anna, Bob and Cindy were arrested.

With what crimes, if any, might Anna, Bob and Cindy be charged and what defenses, if any, could each assert? Discuss.

ANSWER A TO QUESTION 3

I. Anna's Crimes

A. Conspiracy. A Conspiracy is where two or more people agree/intend to commit an unlawful act and do something in furtherance of the act. Here, after hearing of Anna's money, Bob suggested that they hire someone to burn down the warehouse since Bob wanted to build condominiums on the warehouse property and they could both use the insurance proceeds. Their conspiracy was complete once Bob contacted Cindy to burn down the warehouse—they have now done an act of doing something in furtherance of their unlawful act. Both (sic) Bob, Anna and Cindy will be charged with conspiracy to burn down (arson) the warehouse.

1 Pinkerton's Rule. This rule states that all co-conspirators will be responsible for the unlawful acts of other co-conspirators done in furtherance of the conspiracy. Here, Anna will be held responsible for all acts done by Bob and Cindy to further their unlawful conspiracy.

B. Solicitation. Solicitation is when one encourages, asks, incites another into committing an unlawful act. Here Anna would be charged with the solicitation of Cindy because Bob asked Cindy to burn down the warehouse. However, when Cindy agreed she then merged the crime of solicitation into conspiracy.

C. Attempted Insurance Fraud. To be charged with the crime of attempt the defendant must specifically intend to commit the unlawful act and do something in furtherance to show that the defendant actually intended the crime. Here, Anna will be charged with the intent to commit insurance fraud. Because Anna and Bob agreed to commit arson in order to collect insurance money. The attempt will be considered complete when Bob asked Cindy to burn down the warehouse and Cindy set fire to the warehouse as instructed. Even though Anna and Bob decided not to make any insurance claims they

will still be charged with attempted insurance fraud. It was because Daryll the homeless man was killed that they did not want anyone to be suspicious of them. And possible guilt of him dying that caused Anna and Bob to not go through with their insurance claims. Anna will be charged with attempt to commit insurance fraud.

D. Arson is when the defendant intentionally burns down the house of another. Modernly, basically all structures are included, including one's own business or property in order to collect insurance money. The burning must be at least some type of charring to suffice, blackening will not. Here, Cindy set the fire to the warehouse and we assume that it was burned because it was significant enough to cause Daryll's death and burning also qualified because Anna and Bob could collect insurance claims. The burning of the warehouse was intentional as Anna and Bob conspired to have it burned down by asking Cindy to burn it down for a percentage of the insurance proceeds. Anna also burned her own property (business inventory) and the burning is supposed to be of another's property. However if one commits arson with the intention of collecting insurance money then this qualifies as arson because Anna did so for illegal purposes. She also destroyed other people's property that was destroyed in the warehouse.

E. Murder. A homicide is the unlawful killing of another human being. It will be considered murder if malice is proved.

1. Malice. Malice will be proved if any of the following four elements are met: 1) intent to kill (premeditation and deliberation); 2) intent to seriously injure; 3) wanton and willful conduct (depraved heart); and 4) a killing done in connection with a dangerous felony. Here, the state would most likely focus on a killing done in connection with a dangerous felony as this element and intent to kill/murder the defendant is eligible for a first degree murder charge.

2. Felony-Murder. Felony murder is charged when the defendant kills

another human being in the course of a dangerous felony. For a felony to qualify the felony must be considered extremely dangerous so as to show dangers to other people. Most jurisdictions list dangerous felonies as a killing during the commission of arson, rape, robbery, burglary or a kidnaping. It does not matter that you did not intend to kill another person but because of the dangerous situation involved in committing the felony a death could foreseeably occur because of the defendant's actions. Here, Anna conspired to commit the crime of arson, burning down the warehouse and by doing so she was committing a dangerous felony when Cindy went ahead and set fire to the warehouse. Because fire is considered dangerous, a chance of loss of life is easily foreseeable, then Anna will be charged with the felony murder of Daryll.

1. Involuntary manslaughter. Anna will claim that by her planning to burn down the warehouse and Cindy burning it down that they did not intend that Daryll would die. That the fire was an act of criminal negligence and the felony-murder charge should be reduced to involuntary manslaughter. However, this is an unlikely defense because Anna planned on committing arson which qualifies as a dangerous felony because it was foreseeable that another person might be seriously injured or die because of their actions.

II. Bob's Crimes.

A. Conspiracy. See supra. Bob will be charged with the crime of conspiracy as proven in the discussion above under Anna.

1. Pinkerton's Rule. Supra. Bob is a conspirator and has co-conspirators. He will be charged for any crimes by his co-conspirators in furtherance of the crimes.

B. Solicitation. Supra.

C. Attempted Insurance Fraud. Supra.

D. Arson. Supra.

E. Murder. Supra.

1. Felony Murder. Supra.

2. Involuntary manslaughter. Supra.

III. Cindy's Crimes.

A. Conspiracy. Supra.

1. Pinkerton's Rule. Supra.

B. Attempted insurance fraud. Supra.

C. Arson. Supra.

D. Murder. Supra.

1. Felony Murder. Supra.

2. Involuntary Manslaughter. Supra.

ANSWER B TO QUESTION 3

People v. Anna

Conspiracy Liability

At common law a conspiracy is an agreement between two or more persons to commit an overt illegal act or a legal act by illegal means. Modernly an overt act is required. The Warton rule requires one more person in the agreement than is necessary to commit the crime. A party may withdraw from a conspiracy provided the withdraw [sic] is done voluntary [sic] (without duress or immediate apprehension), is disclosed to all other parties of the conspiracy, and is in sufficient time before the crime is committed. A party to a conspiracy is liable for the foreseeable crimes committed by the other parties to the conspiracy prior to the withdrawal.

Here Bob and Anna formed an agreement because “Anna agreed.” The agreement was to burn down the warehouse, an arson. They committed an overt act by contracting with Cindy to burn down the building. Arson is the malicious burning of the dwelling of another. Modernly, the dwelling has been expanded to including most structures and other places, i.e. forest, etc. . . . Likewise the structure can be the defendant's own, if done with criminal intent, i.e., insurance fraud.

Therefore, Anna conspired with Bob to burn the warehouse with the intent of defrauding the insurance company. (At common law, the act of the arson would not be a crime since the structure was not a dwelling, but the intended result of insurance fraud would be a crime, supra, and therefore would still result in a conspiracy.

CONSPIRACY TO COMMIT LARCENY/FRAUD

Conspiracy, defined supra.

Larceny is the trespasser taking and carrying away of the personal property of another with the intent to permanently deprive. Fraud is larceny by trick through misrepresentation of a fact to another to induce the other to give up personal property.

Here Anna (and Bob) intended to burn down the warehouse to collect upon Bob's insurance policy, the personal property of another, the insurance company. Anna agreed to the act. The intent was to defraud the insurance company, an illegal act. By contracting with Cindy an overt act was commenced.

Anna will be charged with Conspiracy to commit fraud.

CONSPIRACY TO COMMIT SOLICITATION OF A CRIME

Conspiracy, defined supra.

Solicitation is the act of urging or encouraging another to commit a criminal act, with the intent of the act being committed. The solicitation can be of any criminal act.

Modernly, however, at common law, the solicitation must have been for the commission of a felony. If the act solicited is committed the solicitation is merged into the crime. Here Bob and Anna agreed to solicit Cindy to commit an arson, a crime. When Bob and Anna contracted with Cindy to burn the warehouse they committed an overt act and can be charged with conspiracy to solicit Cindy to commit arson. Since the arson was committed, infra, the solicitation will merge into the arson.

ARSON

Defined Supra.

Accomplice Liability

An accomplice in the first degree is one who is present at the time of the commission of the crime who may not actually be the principal. An accomplice in the second degree is not present at the time of the crime, but who has the intent to commit the crime and who aids or abets the others in the commission of the crime. Here, Anna was neither present, [n]or apparently aided nor abetted in the arson and therefore would not be liable as [an] accomplice. However, as a member of a conspiracy, supra, all parties are liable for the foreseeable criminal acts of the other parties. Here Anna conspired to burn the structure. If Cindy committed Arson, Anna would be held liable.

Based on conspiracy liability, at common law Anna would not be guilty of Arson because the building was not a dwelling. However, modernly the dwelling has been expanded and would include the warehouse. Because Cindy intentionally (maliciously) burned the warehouse, Anna would be charged with Arson.

MURDER.

Murder is the unlawful killing of another human being with malice aforethought. Malice aforethought is the intentional killing or implied killing through infliction of great bodily harm, unreasonable risk to human life (depraved heart), commission of felony or in some jurisdictions resisting lawful arrest. There must be a causation between the act and the killing.

All murder is second degree unless it is premeditated, killing by enumerated means, or during the commission of a dangerous felony. Then it is statutory first degree murder. Arson, supra, is a dangerous felony.

Here a killing of another occurred because Daryll died. The killing was the actual cause because but for the arson, Daryll would not have died. The arson is the proximate cause of the killing because there were not unforeseen intervening factors that negated the arson as the cause in fact of Daryll's death. Therefore the killing was caused by the arson.

Felony first degree murder is applicable because arson is a dangerous felony. Daryll's death is a result of and occurred during the arson. Further, since a conspirator is responsible for the crimes committed by the other parties to the conspiracy, that are foreseeable, which a death is foreseeable during an arson, Anna would be responsible for Daryll's death and charged with Statutory first degree murder.

Alternative second degree murder. In the event the jury does not believe that it was foreseeable Daryll would be in there because the building was a warehouse and people do not live in warehouses, the jury could find Anna responsible for second degree murder under the theory of unjustifiable risk to human life since the burning of any structure is an uncontrollable event and the likelihood is the fire can get out of control, the agreement to burn the warehouse places human life in unjustifiable risk.

DEFENSE TO MURDER: A mistake of fact, i.e., the warehouse is empty, does not apply because a mistake of a fact is not a defense to a general intent crime, which second degree murder and arson are both (sic).

There are not other defenses to the crime that are applicable.

ATTEMPT FRAUD: An attempt is a significant step towards the commission of a crime coupled with the intent to commit the crime. An attempt can be for any form, but the defendant must have the specific intent of desiring the commission of a[n] actual crime. Fraud, supra, is a crime. Anna intended to partake in the fraud with Bob of his insurance company. Here [sic] and Bob took a significant step towards

the crime then they hired Cindy to burn down the building. Anna will argue that the significant step to the fraud is the filing of the insurance claims and because they did not they did not take a significant step and therefore are not guilty of attempt[ed] fraud. The prosecution will argue that one [sic] the burning occurred, the attempt was in place, and it was too late to back out since a withdrawal of an attempt is generally not a defense as the crime is the “attempt” and the specific means to commit that crime. If not for the burning of the warehouse, Anna could argue the significant step did not occur. However, Anna will be charged with attempt to commit fraud.

PEOPLE V. BOB: Bob will be charged for the same reasons as set forth above for Anna with crimes of conspiracy to commit arson, conspiracy to commit fraud, murder and attempted fraud. In addition Bob will be charged with solicitation, supra, of arson, and fraud.

Solicitation to commit arson, for the same reasons set forth in Anna. (In addition Bob solicited Anna to commit arson.) Bob will not be charged with solicitation to commit arson as the arson occurred and the solicitation is merged into that crime.

However, Bob did encourage Anna to commit fraud by suggesting they hire someone to burn down the warehouse and collect the insurance proceeds, since the fraud was not committed, Bob will be charged with solicitation of Anna to commit fraud.

PEOPLE V. CINDY: As set forth above Cindy will be charged with conspiracy to commit arson, arson and murder.

QUESTION 4

Craft Village is a small town that is popular with tourists because of its fine arts and crafts stores. Craft Village has no public transportation. All of the stores are located on Main Street. There is one large gallery, Northwoods Gallery, at the north end of Main Street. At the south end of Main Street is the Snooze Inn, a large motel. Tourists often stay at the Snooze Inn when they want to spend more than a day in Craft Village. Craft Village shops, by town ordinance, must remain open from at least 10:00 a.m. to 8:00 p.m. every day, including Sundays. All of the shops close at 8:00 p.m. except Northwoods Gallery, which is open until 11:00 p.m. every night. Craft Village provides street lighting along Main Street, which is turned on each night at dusk.

Jean arrived in Craft Village on Sunday night for her annual shopping expedition. As on all of her previous trips to Craft Village, she stayed at the Snooze Inn for two nights. She does not own a car, and one of the reasons she likes Craft Village is that she can walk to all the shops.

Jean got up on Monday morning to go shopping. She shopped all day, and walked back to the Snooze Inn at 7:00 p.m. for dinner. After dinner, at around 8:30 p.m., she began walking to Northwoods Gallery. Half way there, she was accosted by a mugger. The mugger stood in front of her and shouted, "Hand over your purse, or I'll beat you up!" The mugger roughly snatched Jean's purse as she held it out to him. The mugger fled, and Jean turned around and ran back to the Snooze Inn. The mugger was later captured by the police.

On what theory or theories, if any, might Jean recover damages from, and what defenses might she anticipate, in an action against:

1. The mugger? Discuss.
2. Craft Village? Discuss.
3. Northwoods Gallery? Discuss.
4. Snooze Inn? Discuss.

ANSWER A TO QUESTION 4

Jean v. Mugger

Assault

The intentional placing of another in reasonable apprehension of an immediate harm without consent or justification. When the mugger shouted at Jean to “Hand over your purse, or I'll beat you up,” his conduct was volitional and therefore intentional.

Mere words are adequate to cause apprehension. The words “hand over your purse or I'll beat you up” coupled with the fact that he had the present ability to carry the threat out indicates the placing of another in reasonable apprehension.

In addition, Jean held out the purse indicating that she was apprehensive. It does not seem that Mugger had consent or justification.

Therefore, Mugger is liable for assault.

Battery

Battery is harmful or offensive touching of another without consent or justification. When Mugger roughly snatched Jean's purse from her he touched an item that was intimate to Jean's person, which was offensive.

Therefore, there was a touching of another. There is not consent due to the fact Jean held her purse out because she was afraid and no justification.

Therefore Mugger is liable for battery.

TRESPASS TO CHATTEL

Trespass to chattel is the interference with the personal property of another.

When Mugger roughly snatched Jean's purse and fled he interfered with the personal property, a purse, which belonged to Jean.

Jean gave no consent and Mugger was not justified in his behavior.

Thus, Mugger is liable for trespass to chattel.

Jean may recover damages caused by the interference.

CONVERSION

Conversion is the intentional exercise of dominion and control over the personal property of another.

When Mugger snatched Jean's purse and fled he exercised dominion and control over Jean's personal property contrary to Jean's possessory rights.

Therefore, Mugger is liable for conversion. Jean may recover for damages for the cost of the purse including value of the purse in a forced sale or reasonable rental value if returned, plus damages.

Jean v. Craft Village

Negligence

Craft Village may be liable to Jean for damage if it is found that Craft Village owed a duty to Jean, that they breached their duty, which was the actual and proximate cause of Jean's injuries.

DUTY—GENERAL DUTY

As a small town Craft Village owes a duty of due care not to subject visitors of the town to unreasonable harm as a reasonable small town in the same or similar circumstances.

It may be argued that because Craft Village was a small town, with no public transportation, popular with tourists and all stores located on one main street that they owed a duty of care to the patrons of the village to make the streets safe. Especially in light of the fact the city required the stores to remain open until 8:00 p.m. which could be considered past dark and more inviting for crime.

Jean was a foreseeable plaintiff in that she was a tourist of the village out shopping. Therefore, Craft Village owed a duty.

SPECIAL DUTY—LAND OCCUPIER

As a small town, Craft Village is the occupier of the city street, including Main Street. Jean will argue that Jean is an invitee because she was on the street for the purpose it was open to the public. Thus, Craft Village owed a duty to inspect, discover, warn or correct any harm.

Even if Jean is determined to be a licensee Craft would owe a duty to warn or make safe any known harm.

The facts do not indicate that Craft Village was aware of or had reason to inspect for any incidents of crime. There is no special duty owed.

BREACH

Under the general duty of making the streets safe given the circumstances it may be argued that because it is such a small town with a large concentration of tourists in one location and keeping the business open after dark it is reasonable to provide adequate protection by police or security on Main Street. Especially because there is no public transport.

Therefore, by failing to provide security, Craft Village breached its duty.

Causation

Actual cause

But for failure to provide protection, Jean would not have been harmed.

Proximate Cause

It is foreseeable given the above mentioned circumstances that a tourist like Jean would be mugged—Mugger is intervening force but Craft made crime more likely to occur.

Thus, Craft Village is the proximate cause.

Damages

General damages for pain and suffering.

Special damages for loss of purse.

Defenses

Contributory Negligence

Conduct which falls below the standard of care for one's own protection.

Craft Village will argue that Jean went out on her own and did not protect herself. However, no facts indicate Jean's conduct contributed to her own injury. Not a valid defense.

Assumption of Risk

A party assumes the risk if he knowingly undertakes an activity with full knowledge of the risk.

No facts indicate Jean knew the risk of a robbery occurring. Assumption of risk is an invalid defense.

Immunity

As a city, Craft Village will seek immunity. However, the act of maintain[ing] Main Street was proprietary in nature and not immune.

Jean v. Northwood Gallery (Northwoods)

Negligence

Defined supra.

Duty

Special duty—As a store owner Northwoods owed a duty to all its invitee patrons to inspect, discover and warn of any dangers. However, Jean was not a patron or even on Northwoods' property.

Therefore, there is no duty owed to Jean.

General Duty — Not to subject patrons to unreasonable harm. Northwoods owes no general duty because Jean was not patron.

Jean v. Snooze Inn (Snooze)

Negligence

Defined supra.

Duty—as an innkeeper, Snooze owes a higher standard of care, including to protect guests from harm and partake in a course of conduct which causes the least harm.

Jean was a guest and therefore a duty was owed.

Breach

By failing to provide protection or some type of shuttle service for its guests, Snooze's actions were below the standard of care of a reasonable innkeeper in the

same or similar circumstances. Especially given the concentration of tourists which increases the likelihood of crime. Thus Snooze breached its duty of care to Jean.

Causation

Actual Cause

But for Snooze's failure to adequately protect Jean, Jean would not have been robbed.

Snooze is the actual cause.

Proximate Cause

It is foreseeable that it being after hours and in a tourist area that a person will be robbed. Snooze will claim Mugger's actions were an intervening force. However, Mugger's conduct was the type of harm they were obligated to protect against, thus not superceding.

Thus, Snooze is the proximate cause.

Damages

As discussed under negligence of Craft Village. Jean is entitled to general and special damages.

Defenses

Contributory Negligence

This will fail as discussed above.

Assumption of Risk

This will fail as discussed above.

Indemnity

If Snooze is found secondarily liable then they may seek indemnity from Craft Village.

Contribution

Joint tortfeasor may seek reimbursement from other tortfeasor.

Craft Village and Snooze may file for contribution against each other.

ANSWER B TO QUESTION 4

Jean v. Mugger

1. Issue—Is Mugger Liable to Jean for Tortious Assault?

Under common law, assault is the voluntary act with intent to place another in immediate apprehension of a battery (harmful/or offensive contact). Here Mugger, expressly “threatened” Jean by saying, “Hand over your purse or I'll beat you up.” This express threat is sufficient and of which Jean was aware to cause a reasonable person in immediate apprehension of being beat up (harmful/offensive contact). Therefore Mugger will be liable to Jean for assault.

2. Issue—Is Mugger liable to Jean for Tortious Battery?

Under common law, battery is the voluntary act with intent to cause harmful/offensive contact and does cause such contact. Here, Mugger used his threat to obtain the purse. Because Jean actually held her purse out to him, rather than him taking it by force (no harmful/offensive contact occurred), Mugger will probably not be liable for battery.

3. Issue—Is Mugger liable to Jean for Conversion?

Conversion is the unreasonable interference with another person's chattel to sufficiently dispossess them of it. Here, Mugger's interference is the crime of robbery (Trespassory taking and carrying away of personal property of another with the intent to permanently deprive for the person/presence of through the use of force or fear). Because his words and actions expressed that he intended to take and keep the purse, which he in fact did, Mugger will be liable to Jean for conversion.

Jean v. Craft Village

4. Issue—Can Craft Village be liable to Jean for negligence?

Negligence is the failure to use due care that a reasonable person would use in the same or similar circumstances. A prima facie case of negligence requires the showing of the elements of duty, breach, actual and proximate cause and damages.

5. Did Craft Village owe Jean a Duty?

Under common law, the duty owed is that of reasonable or due care under most situations where there is a duty owed. Normally there is no duty to strangers, absent a special relationship or statute. Where duty is owed by relationship, varying standards of care may be imposed depending on the nature of the relationship. Here, at minimum, the town is required to use due care in the protection of their citizens and visitors.

6. Did Craft Village owe Jean a higher standard of duty?

Craft Village is a town [in] which streets are open to the public. Jean's status as a public invitee (licensee) requires that the town exercise a higher standard of care. The standard required is to warn of known dangers. If the town knew or should have known they had a problem with crime, they have a duty to warn/repair.

7. Did Craft Village breach their duty?

Breach occurs when the defendant fails to use reasonable care. Here, the town provided street lighting which may be viewed as a reasonable care to deter crimes which often happen in the dark, such as robbery. The town also required all businesses to remain open until 8:00, that could be to ensure that there are a lot of people around during “core” hours, which provides another level of protection from

crime. However, if Craft knew or should have know they had a crime problem, and these security features they've employed (lights, hours) are not sufficiently reasonable to mitigate the threat of crime, they may be found to have breached their duty. Absent their knowledge of the crime, Craft will not be found to have breached.

8. Was Craft Village actions the legal/proximate cause?

Unless it can be found that Craft Village failed to act reasonably in the protections it provided, the town itself is not the legal or proximate cause of Jean's mugging, the mugger is. Therefore the town will not be held responsible.

Jean v. Northwoods

9. Issue—Can Northwoods be liable to Jean in negligence?

Negligence and its elements are discussed above. Northwoods may owe a duty to its customers to discover and repair all known dangers. Here, Jean only made it halfway to the store, so she wasn't on the premises. However, Northwoods is the only store that stays open until 11:00 pm at night. Therefore if it can be found that Northwoods' late hours are not reasonable for the safety of its customers, they may owe a duty to warn its customers of potential dangers to include criminal activity in the area.

ACTUAL CAUSE — is the “cause in fact” of the harm done. PROXIMATE CAUSE —is the legal scope of responsibility. Under Palsgraf, Cardozo asserted that one is responsible for those plaintiffs in the zone of danger, however, Andrews asserted a duty to one is a duty to all. Here, the Mugger is the “But, for” or cause in fact of Jean's mugging (Damages). However, if Northwoods' late hours are a substantial factor in her mugging (Jean wouldn't have been on the street after 8:00 because the other stores close then), and on the street to the store is sufficiently within the zone of danger, then Northwoods may be found to have had a duty which they breached.

Jean v. Snooze Inn

10. Can Snooze Inn be liable to Jean for negligence?

Negligence (see supra). As an innkeeper, Snooze Inn owes a duty of care to its patrons. Jean was a patron of the hotel as she stayed overnight for two days. The standard of care of innkeepers is determined by a special relationship under which Jean was an invitee. Under this standard, the hotel will have a duty to warn of all known dangers, including a danger of criminal activity if they knew or should have known. Absent the knowing of this fact, Snooze Inn, there are no facts to show that Snooze failed to act reasonably. Therefore, they will not be liable to Jean for Negligence.

11. Does Northwoods/Snooze/Craft have a defense of assumption of the risk?

Assumption of the risk is when a person knows and appreciates the nature of risks inherent to an activity and assumes that risk by voluntarily proceeding with the activity. Here, Jean, as a visitor, may not have known of the crime potential in the town. However, the fact that all but one of the stores close at 8:00 pm may be an indicator that the town does not want people on the streets after that time. The fact that Northwoods was open until later may negate that logic. If a reasonable person would not walk in the streets after 8:00 because of obvious dangers or risks (especially to a woman traveling alone), the business and hotel may be able to assert the defense of assumption of the risk. Assumption of the risk is a complete bar to the plaintiff's recovery.

12. Does Northwoods/Snooze/Craft have a defense of comparative negligence?

At common law, a person has the responsibility to act reasonably for the protection of their own self. Here if Jean was not acting reasonably in walking alone, after dark, on an unoccupied street, the hotel/business may be able to assert comparative negligence which is a partial bar to recovery. Jean's recovery will be apportionately reduced by the percentage of fault attributed to her. In some jurisdictions, comparative fault is a complete bar, if the percentage of fault of the plaintiff is half or more (51%).