



California First-Year Law Students' Examination

**Essay
Questions and
Selected Answers**

June 2022



ESSAY QUESTIONS AND SELECTED ANSWERS

JUNE 2022

CALIFORNIA FIRST-YEAR LAW STUDENTS' EXAMINATION

This publication contains the four essay questions from the June 2022 California First-Year Law Students' Examination and two selected answers for each question.

The selected answers are not to be considered "model" or perfect answers. The answers were assigned high grades and were written by applicants who passed the examination. They are reproduced as submitted by the applicant, except that minor corrections in spelling and punctuation were made for ease in reading. These answers were written by actual applicants under time constraints without access to outside resources. As such, they do not always correctly identify or respond to all issues raised by the question, and they may contain some extraneous or incorrect information. The answers are published here with the consent of the authors.

| <u>Question Number</u> | <u>Subject</u> |
|------------------------|----------------|
| 1. | Torts |
| 2. | Criminal Law |
| 3. | Contracts |
| 4. | Criminal Law |

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ESSAY QUESTION 1 OF 4

Answer All 4 Questions



California First-Year Law Students' Examination

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 situation 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 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 to the facts.

If your answer contains only a statement of your conclusions, you will receive little or no 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 that are not pertinent to the resolution of the issues raised by the call of the question.

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

QUESTION 1

Ray wanted to take a shortcut home through a construction site. It was fenced and signs were posted stating: NO TRESPASSING. Ray climbed the fence and started crossing the construction site. Owen, the property owner and construction site manager, saw Ray and yelled at him to stop. Owen was about to blow up a tree stump to clear the land. As Owen started chasing Ray, he left the explosives unattended.

While Ray was running, his foot got caught in a hole in the ground that should have been covered. Ray fell and broke his leg. As Owen went over to Ray and started to help him up, the explosives accidentally exploded. Flying dirt and construction debris hit Owen and Ray. Ray was seriously injured as a result.

Owen called for medical assistance, and while they were waiting, he wrapped one of Ray's wounds with a rag in order to stop the bleeding. The rag was contaminated with dirt and bacteria, which led to an infection in the wound, worsening Ray's injuries.

1. Is Ray liable to Owen for any intentional torts? Discuss.
2. What tort claims can Ray reasonably assert against Owen; what arguments can Owen make in his defense; and what is the likely outcome? Discuss.

QUESTION 1: SELECTED ANSWER A

1. Owen v. Ray

Trespass to Land

Trespass to land is the intentional physical invasion of the property of another without permission to do so.

The property belonged to Owen; therefore, it was the property of another. Ray intentionally stepped onto the land because he wanted to take a shortcut home, and his intention to step onto the land is further demonstrated by Ray climbing over the fence for the purpose of accessing the land. He physically gained access to the land when he climbed the fence and started crossing the construction site. Owen, the property owner, did not give anyone, including Ray, permission to be on his land as demonstrated by the posted sign that stated NO TRESPASSING.

Ray is liable to Owen for trespass to land

2. Ray v. Owen

Strict Liability - Abnormally Dangerous Activity

Under the theory of strict liability, the defendant will be liable for any injuries that resulted from certain actions due to the nature of the activity (i.e., possession of wild animals and engagement in abnormally dangerous activity), even though he had taken all precautions and due care.

Owen, the property owner and the construction site manager is liable for any injuries that resulted from his activity of blowing up a tree stump because dynamiting with explosives is an inherently dangerous activity, therefore, no matter how much precautions he took, he will be liable for any injuries that is a direct result of his activity on the property. The fact

stated that Owen did take the precaution of fencing his property and posting signs that stated NO TRESPASSING, but regardless of his precautions, Ray was still injured. The fact also states that Ray wanted to take a shortcut home, therefore, we can infer that the property is in a residential area and dynamiting in a residential area is not a normal occurrence.

Actual Cause

The plaintiff must establish that the activity is the actual cause to his injuries, and one method to determine the actual cause is through the But-For test.

Ray will claim that but-for Owen's activity of using explosives on his property, he would not have been injured by the flying dirt and construction debris when the explosives accidentally exploded. Therefore, Owen's action is the actual cause of Ray's injuries.

Proximate Cause

In addition to the actual cause, the plaintiff must show that the injuries he sustained is foreseeable.

Ray will argue that when explosives detonate, it is foreseeable that it will disrupt the landscape around the site of the explosion sending debris and dirt flying resulting in serious injuries to anyone nearby. Therefore, the activity of dynamiting is the proximate cause to Ray's injuries.

Damages

The plaintiff must show that he suffered actual injuries as a result of the activity.

The fact states that Ray was seriously injured as a result of the explosive exploding, therefore, he suffered actual injuries as a result of the activity.

Ray will be able to claim strict liability due to an inherently dangerous activity against Owen.

Negligence - Hole in the Ground

In order for the plaintiff to bring about a cause of action in negligence, they must show that the defendant had a duty, they breached the duty, the breach of duty is the actual and proximate cause to the damages they suffered, and that the plaintiff did suffer an injury as a result.

Duty

The defendant has a duty to conduct themselves in a reasonable standard that will minimize the harm their actions will cause another person. And landowners have an added duty to make safe and warn of any dangers on their property to licensees and invitees, and have a duty to warn any dangers on the land to known trespassers.

Owen, as a landowner, have a duty to warn known trespassers of any dangers on his land. As discussed supra, he put up fences around his property and posted signs that said NO TRESPASSING, therefore, he can argue that he satisfied his duty as a reasonable landowner to secure his property. However, Owen also has a duty to warn of potential man-made dangers that's present on his property.

Breach of Duty

The defendant breached his duty when his conduct falls below the reasonable person standard. The Learned Hand formula, $B < PL$, is one way to determine whether the defendant breached his duty is the Burden to make safe (B) is less than the probability of harm occurring (P) times the magnitude of the harm, then the defendant breached his duty.

Owen, as a landowner, have the duty to cover the hole in the ground on his property. The burden to cover the hole is minimum as he could have just temporarily put a board over it, but because he failed to do so, Ray's leg got caught in the hole and he fell and broke his leg.

The probability of someone tripping over the hole (P) and suffering a broken leg (L) is greater than Owen's burden of simply covering up the hole, therefore, Owen breached his duty.

Actual Cause

Defined supra.

Ray will assert that but-for Owen's failure to cover the hole, his foot wouldn't have gotten caught in the hole and he wouldn't have fell and broke his leg. Therefore, Owen's breach of duty is the actual cause of Ray's injuries.

Proximate Cause

Defined supra.

Ray will assert that it is foreseeable that someone would trip over a hole in the ground while they are running if they weren't aware of the existence of the hole, and as a result of tripping and falling, they would suffer injuries such as a broken leg. Therefore, Ray will assert that it was foreseeable that he would trip over a hole in the ground while running and break his leg as a result. Owen's breach of duty is the proximate cause of his injuries.

Damages

Defined supra.

As a result of Owen's breach of duty, Ray tripped over the hole and broke his leg, therefore, he actually suffered damages as a result of Owen's breach of duty.

Negligence - Leaving the Explosives Unattended and Using a Dirty Rag

As defined above.

Owen has a duty to make sure that the dynamites he was using was secure at all times.

He breached that duty when he left the explosives unattended. It was the actual cause of

the Ray's injuries because but-for the explosives been left unattended, they wouldn't have accidentally exploded. It is foreseeable that someone would be severely injured by exploding explosives, and Ray was seriously injured as a result. Therefore, Owen is negligent.

Rescuer's doctrine

Owen, as a rescuer, can argue that he

Defense: Contributory Negligence by Ray

The defendant can assert the defense of contributory negligence on the part of the plaintiff if the plaintiff's own negligence contributed to the plaintiff's injury. If the defendant can prove contributory negligence, the plaintiff will be completely barred from recovery.

Owen will assert that Ray was negligent as well because he trespassed onto the property by climbing over a fence to be at a location where he shouldn't have been. Because of Ray's negligence, He will be completely barred from any recovery even though Owen was also negligent.

Defense: Comparative Negligence by Ray

In a jurisdiction that recognizes comparative negligence, the plaintiff will not be completely barred from recovery even though he was also negligent. Instead, the court will assign percentage of fault to both the plaintiff and the defendant. And the plaintiff will be able to recover the percentage assigned to the defendant.

The court can find that both Ray and Owen were negligent in their conduct and they can decide that Owen was more negligent than Ray or vice versa. In this case, Ray will be able to recover the percentage the court deemed that Owen was negligent.

Defense: Assumption of Risk

The defendant will be able to assert a claim of assumption of risk if he can show that the

plaintiff knew the dangers, was able to appreciate the magnitude of the danger, and decided to assume the risk anyway by carrying out their conduct.

This defense will fail because the fact does not state that Ray knew Owen was dynamiting on his property, therefore, he wouldn't have known the magnitude of the risk that he was taking when he trespassed onto the land.

QUESTION 1: SELECTED ANSWER B

1. Owen v. Ray

INTENTIONAL TORTS. Require a VOLITIONAL ACT (a voluntary act), INTENT (plaintiff has the specific intent to achieve the desired results or the general intent because he knows with substantial certainty the consequences will result) and CAUSATION (the act must be a substantial factor in bringing about the injury).

TRESPASS TO LAND. The intentional interference with the real property of another person. The intentional invasion onto the land of another. Here, Ray saw the fence and the no trespassing sign, but he climbed the fence and VOLITIONALLY ACTED to start "crossing" Owen's land. Ray had the SPECIFIC INTENT to enter Owen's land and his act of entering was a SUBSTANTIAL FACTOR in bringing about Owen's injury for trespass to land.

Thus, Ray is liable to Owen for trespass to land.

DAMAGES. Owen will be able to claim damages caused by Ray's trespass. These damages could be GENERAL or SPECIAL. If no harm was caused to Owen's land, the damages will be NOMINAL.

DEFENSES. Ray has no applicable defenses.

2. Ray v. Owen

NEGLIGENCE. A standing for negligence requires plaintiff show a duty was owed, the duty was breached, and the breach caused plaintiff's damages.

DUTY. An obligation imposed by law as conformity to a particular standard of care.

GENERAL DUTY OF CARE. Everyone owes a duty not to cause unreasonable risk of harm to others. The defendant's conduct is compared to a REASONABLY PRUDENT

PERSON (RPP) under the same or similar circumstances. This duty is owed to foreseeable plaintiffs (infra). Thus, Owen owed a duty to act as a RPP landowner and construction site manager in the same circumstances.

FORESEEABLE PLAINTIFF. In a Cardozo court, a duty is owed to the foreseeable persons in the ZONE OF DANGER. In an Andrews court, a duty is owed to ANYONE injured as a proximate result of defendant's negligence. Here, Ray was injured as a result of an explosion occurring on Owen's land. Ray was in the zone of danger when injured by the blasting. Ray was also injured as a proximate result of Owen's conduct. Thus, Ray is a foreseeable plaintiff in all courts.

SPECIAL DUTY. A special duty may replace the general duty of care if applicable. Here, Owen was the property owner. Thus, he owes a landowner duty of care.

LANDOWNER. The extent of the duty owed by landowners depends on where the injury occurred and the status of the person entering the land. This issue will turn on whether Ray was an unforeseeable or foreseeable trespasser as analyzed below:

UNFORESEEABLE TRESPASSER. A landowner owes no duty of care to unforeseeable trespassers. Owen will claim he owes no duty to Ray since Ray was an unforeseeable trespasser. Ray will argue Owen had signs up, so surely he was foreseeable. It is likely Owen's argument will fail and he will owe Ray a duty as a foreseeable trespasser (infra).

FORESEEABLE TRESPASSER. A landowner owes foreseeable trespassers a duty to warn of and make safe any ARTIFICIAL CONDITION that is non-obvious and dangerous. Ray will assert Owen owed him a duty to warn him of the blasting on the land since he was a foreseeable trespasser.

AFFIRMATIVE DUTY OF CARE: CREATION OF PERIL. A defendant who intentionally or

accidentally creates plaintiff's peril owes a duty to act as an RPP to aid the injured plaintiff. Here, Owen's blasting caused Ray's injury and Owen thus he owed a duty to provide Ray care as an RPP would have done. BREACH. Once a duty of care is established, plaintiff must show defendant breached his duty of care.

RISK ANALYSIS DOCTRINE. If the burden of taking precautionary measures is less than the risk of harm to plaintiff by not taking precautionary measures, it is said defendant breached his duty of care.

Owen will claim he warned Ray by posting the "no trespassing" sign. However, this sign did not warn him of the blasting activity on the land. The burden of taking precautionary measures to add additional signs to warn of the blasting is slight compared to the risk of harm posed by a trespasser getting injured by the blast. Thus, it is likely Owen breached the duty of care owed to Ray as a foreseeable trespasser.

Additionally, Owen attempted to aid Ray by wrapping his wound, however he used a rag that was contaminated with dirt and bacteria. An RPP would have known of the risks of using a contaminated rag to cover an open wound and would have attempted to get a clean rag. Thus, Owen breached his affirmative duty of care to Ray.

CAUSATION. Once negligent conduct has been shown, plaintiff must show that conduct was the actual and proximate cause of his injuries.

ACTUAL CAUSE. But for test: But for defendant's conduct, plaintiff would not have been injured. But for Owen's failure to warn of or make safe the blasting activity, Ray would not have been injured. Thus, actual cause has been met.

PROXIMATE CAUSE. This is a test of foreseeability. Defendant will be liable for all foreseeable results or consequences that occur within or in response to his negligent act.

Ray will assert it is foreseeable that a trespasser would be injured if he is on the land

where blasting is occurring. Ray was injured as a direct result of the explosion. Thus, proximate cause has been met.

DAMAGES. The plaintiff's prima facie case is incomplete without a showing of actual damages to person or property. Here, Ray suffered serious injuries to his person because of the blasting. Thus, Ray has damages.

DEFENSES. These are defendant's claims against imputed liability.

CONCLUSION. It is likely Owen will be liable for negligence.

CONTRIBUTORY NEGLIGENCE. Plaintiff's failure to use due care to prevent self from unreasonable risk of harm. Owen will assert Ray was warned by the posted signs and fence but climbed over anyway. Thus, he should be barred from his claim due to his own contributory negligence.

LAST CLEAR CHANCE. The person with the last clear chance to avoid the accident and fails to do so is liable for negligence. Ray will assert Owen who was in control of the explosive material had the last chance to avoid the accident but failed to do so, thus Owen is liable for negligence.

COMPARATIVE NEGLIGENCE. In a PURE comparative negligence jurisdiction, plaintiff is able to recover despite his comparative negligence. Here, Ray will be able to recover despite any negligence on his part.

In a PARTIAL comparative negligence jurisdiction, plaintiff is able to recover so long as he is no more than 50% negligent for his injuries. Here, Ray must be no more than 50% negligent to recover from Owen.

ASSUMPTION OF THE RISK. The plaintiff understood and appreciated the risk and voluntarily proceeded in the face of the risk. Here, Owen will claim Ray understood the risks because he saw the posted sign and the fence but voluntarily proceeded despite

these. Ray will assert he didn't know of the blasting; thus, he could not have assumed the risk of injury for that. It is likely this defense will fail.

NEGLIGENCE CONCLUSION. Owen will be liable for negligence to Ray.

STRICT LIABILITY- ULTRA-HAZARDOUS ACTIVITY. A showing that an absolute duty was owed, the duty was breached, and the breach caused plaintiff's damages.

DUTY. An absolute duty to make safe is owed. Owen owed an absolute duty to make his blasting activity safe.

FORESEEABLE PLAINTIFF. Supra. Ray is a foreseeable plaintiff.

ULTRA-HAZARDOUS ACTIVITY. Applies when 1) the activity involves the risk of serious harm to person or property, 2) the activity cannot be performed without the risk of serious harm, and 3) the activity is not commonly conducted where it is being engaged in. Here, blasting involved the risk of serious harm to person or property. And blasting cannot be performed without the risk of serious harm. Additionally, Owen was only blasting to clear the land and, thus, it's likely it was not common for the area it was being conducted. Thus, Owen's blasting was an ultra-hazardous activity.

BREACH. Supra. Owen failed to make absolutely safe his blasting activity. Thus, he breached his duty owed.

CAUSATION. Supra.

ACTUAL CAUSE. Supra. But for Owen's failure to warn of or make safe the blasting activity, Ray would not have been injured. Thus, actual cause has been met.

PROXIMATE CAUSE. Supra. Ray will assert it is foreseeable that a trespasser would be injured if he is on the land where blasting is occurring. Ray was injured as a direct result of the explosion. Thus, proximate cause has been met.

DAMAGES. Supra. Here, Ray suffered serious injuries to his person because of the

blasting. Thus, Ray has damages.

CONCLUSION. Owen will be strictly liable for all harm caused to Ray.

DEFENSES. Supra.

CONTRIBUTORY NEGLIGENCE. Supra.

COMPARATIVE NEGLIGENCE. Supra.

ASSUMPTION OF THE RISK. Supra. Ray will assert he didn't know of the blasting occurring on Owen's; thus, he could not have assumed the risk of injury for that. It is likely this defense will fail.

STRICT LIABILITY CONCLUSION. Owen will be strictly liable for injuries cause to Ray.

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ESSAY QUESTION 2 OF 4

Answer All 4 Questions



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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 situation 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.

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QUESTION 2

For her birthday, Tony gave his girlfriend, Grace, a diamond necklace that had belonged to his grandmother. The necklace had deep sentimental value to Tony. Shortly thereafter, Grace broke up with Tony. Tony asked Grace to return the necklace, but she refused.

Upset over the break-up, Tony went to a bar and drank heavily. In a fit of intoxicated rage, he decided to confront Grace and take the necklace. Tony left the bar and walked to Grace's clothing store, where he knew she would be alone and preparing to close up for the night. Tony entered the store through the open door, and closed and locked the door behind him. Grace was standing behind a counter, wearing the diamond necklace. Tony walked up to Grace, grabbed her wrist and shouted, "You're not going anywhere until you give me the necklace. Don't make me hurt you."

Frightened for her safety, Grace broke free from Tony's grasp, grabbed a handgun that she kept hidden behind the counter, and fired a shot at Tony. The bullet hit Tony in the stomach, seriously injuring him.

1. With what crimes can Tony reasonably be charged and what defenses, if any, can he reasonably raise? Discuss.
2. With what crimes can Grace reasonably be charged and what defenses, if any, can she reasonably raise? Discuss.

QUESTION 2: SELECTED ANSWER A

What Crimes Can Tony Reasonably Be Charged With?

Burglary

Common law burglary is defined as the breaking and entering of the dwelling house of another, at night, with the intent to commit a felony therein. Modern law defines burglary as the unauthorized entry into a structure with the intent to commit an unlawful act therein.

Here, Tony went to Grace's store at night with the intention of taking the necklace from her. Although Tony went to Grace's store with the intent to commit a felony, the facts state that he knew Grace would be there "preparing to close up for the night". These words indicate that the store was open to the public. Thus, under the common law definition of burglary, there was no breaking and entering by Tony. Under the modern law definition, there was no unauthorized entry because, unless otherwise stated, stores are open to the general public.

Thus, Tony would not likely be charged with burglary.

Robbery

Larceny (defined infra) committed by force when the property is removed from the victim's person or presence.

Here, Tony intended to enter Grace's store and take the necklace from her. Although he did use force when he grabbed her and told her "I will hurt you", no facts indicate that Tony actually attempted to take possession of the necklace from Grace. Thus, the elements of robbery were not met.

Because of this, Tony is unlikely to face a charge of robbery.

Attempted Robbery

An attempt is shown to have taken place when a defendant takes steps in furtherance of the objective crime with intent to carry out that crime yet fails to succeed. Robbery is defined supra.

Here, Tony went over to Grace's store with the intention of taking the necklace from her. Once inside of the store, he grabbed Grace's arm and threatened to hurt her if she did not give him the necklace. Because an attempt requires the intent to commit the crime, an overt act, and the failure of that act to result in the intended crime, Tony may face a charge of attempted robbery if a jury decides that Tony's actions, if successful, would have resulted in a successful robbery.

Thus, Tony could be charged with attempted robbery.

Larceny

The trespassory taking and carrying away (asportation) of the personal property of another with the intent to permanently deprive the owner.

Here, Tony went to Grace's store with the intent of taking her necklace from her.

Although Tony did possess the mens rea necessary for larceny, no facts indicate that Tony ever gained possession of the necklace or carried it away.

Therefore, the elements of larceny were not met.

Criminal Assault

The placing of another in fear of imminent harmful or offensive contact.

Here, Tony walked in the store, closing and locking the door behind him. Tony walked up to Grace, just before grabbing her wrist. The facts do not state whether or not Grace was facing Tony, as a victim must be aware of the assault as it is taking place, or if she was facing in another direction. If it can be shown that Grace was aware of Tony's presence in

the store and saw him coming toward her before he grabbed her, Tony may be charged with assault. If it is shown that Grace was not aware of Tony's presence until she had already made contact with her, Tony will not likely be charged with assault.

It will be up to a court to decide if Tony will be charged with criminal assault.

Criminal Battery

Intentional harmful or offensive contact.

Here, Tony grabbed Grace's wrist before threatening her to return the necklace. To be charged with criminal battery, a defendant must be shown to have intended the harmful or offensive contact with the victim. Tony walked up to Grace and grabbed her. Indicating that he intended to cause the touching and did cause the touching by intentionally grabbing Grace's wrist. Thus, the elements of criminal battery are met.

Because of the above facts, Tony may be charged with criminal battery.

Extortion

The use of threat of harm or exposure of sensitive information to induce another to act.

Here, Tony told Grace "You're not going anywhere until you give me the necklace. I will hurt you." To be charged with extortion, a defendant must be shown to have induced the victim to act against his will through use of threat. "I will hurt you" would be understood as a threat by a reasonable person which may induce her to act against her will.

Based on this. Tony may be charged with extortion.

False Imprisonment

The intentional confinement of a person without reasonable means of escape. May either be through use of force or without force.

Here, Tony grabbed Grace's wrist and said, "You're not going anywhere until you give me the necklace". He also closed and locked the door behind him as he entered the store. If

it can be found that Grace had no reasonable means of escape from the store, Tony may be charged with false imprisonment. Although Tony closed and lock the door behind him, it is possible that there may have been another reasonable means of escape for Grace. However, if it is shown that Tony could have easily overpowered her, she will be shown to have been falsely imprisoned.

Thus, Tony may be charged with false imprisonment.

Defenses

Intoxication

Voluntary intoxication is not usually a defense to unlawful actions. It may, however, be considered in deciding if intent was present at the time of the act. Involuntary intoxication may be a defense to unlawful acts.

Here, Tony voluntarily became intoxicated when he decided to go to a bar and drink. After he had become intoxicated, he decided to go over to Grace's store to collect the necklace from her. It would be up to a court to decide if Tony's intoxication negates the intent necessary for his acts. If it can be shown that Tony would not have committed such acts in the absence of intoxication, he may be successful in this defense.

It will be up to a court to decide if Tony may use this defense.

What Crimes Can Grace Reasonably be Charged With?

Assault With A Deadly Weapon

Occurs when one uses a weapon known to cause death or serious bodily injury to commit assault against another.

Here, Grace grabbed her gun from behind the counter and fired a shot at Tony. As stated supra, assault is defined as the reasonable apprehension of imminent harmful contact.

The firing of a bullet in the direction of another would reasonably place that person in

apprehension of harmful contact if the bullet should strike them. Thus, the elements of aggravated battery are met.

Therefore, Grace could be charged with aggravated battery.

Aggravated Battery

The use of a weapon known to cause death or serious bodily injury to inflict a harmful or offensive contact.

Here, Grace shot at Tony and the bullet hit him in the stomach. When Grace went behind the counter and grabbed her gun, firing it at Tony, a reasonable person would infer that she intended to make contact with his person using the bullet. Thus, the elements of aggravated battery have been met.

Attempted Murder

Attempt (defined supra). Common law murder is defined and the unlawful killing of another with malice aforethought. 1) Intent to kill, 2) Unjustifiably high risk to human life (depraved heart), 3) Reckless indifference, 4) Certain felonies all establish the requisite intent for common law murder.

Here, it may be inferred from Grace's conduct of shooting directly at Tony that her intention was to either kill him or, at minimum, inflict serious bodily injury upon him. For a defendant to be charged with attempted murder, it must be shown that they had the intent to carry out the murder, took steps in furtherance of the objective of murder, and were unsuccessful. Tony did not die, but was seriously injured by the gunshot wound.

Based on this, Grace would likely be charged with attempted murder.

Self-Defense

A person has a right to use necessary force to protect his property or person. Deadly force is only considered necessary if the

QUESTION 2: SELECTED ANSWER B

1. STATE V. TONY

BURGLARY

Burglary at common law is the unlawful breaking and entering the home or dwelling of another with the intent to commit a felony therein. Modernly, the element of dwelling has been expanding to any property of another and the element of nighttime has been expanded to any time of day or night. Here, Tony has decided to confront Grace to take her necklace. Tony intended to commit a felony therein. However, there are not facts to determine that Tony entered the store by breaking. The store is likely still open because Grace was preparing to close up for the night and therefore patrons still had access to enter through the unlocked front door as Tony did here. Therefore, because the element both in common law and modernly requiring breaking and entering is not satisfied. Tony will not be charged with burglary.

LARCENY

Larceny is the unlawful intentional taking and carrying away of another's personal property with the intent to permanently deprive. Any asportation is enough to satisfy the element of taking and carrying away. Here, Tony intends to take the necklace from Grace; has entered the store where she worked, and grabbed her wrist. However, Tony has not taken or carried away the necklace. Therefore, although Tony had the intent to trespassorily take and carry away Grace's necklace there was no asportation as required to prove larceny. Tony will not be charged with Larceny.

FALSE IMPRISONMENT

False imprisonment is the unlawful confinement of another to a bounded area. Victim must know of confinement and there must be no reasonable means of escape. Here,

Tony has entered the store where Grace works and closed and locked the door behind him. This act will likely satisfy the confinement to a bound area. It is foreseeable that the store will have a back entrance or exit however by closing the main means of escape via the front door Tony has satisfied the element of confining Grace to a bound area.

However, there are no facts to determine whether Grace was aware of her confinement. If additional evidence is presented that Grace knew of her confinement, Tony will be reasonably charged with False Imprisonment.

ASSAULT

Assault is the intentional creation of a reasonable imminent fear of a harmful or offensive contact to victim. Here, Tony walked up to Grace and grabbed her wrist and shouted "You're not going anywhere until you give me the necklace. Don't make me hurt you."

This threat of harm would likely create in a reasonable person in Grace's position to find an imminent fear of bodily harm. The threat explicitly states bodily harm to Grace.

Therefore, defendant will be charged with assault.

DEFENSES TO ASSAULT

VOLUNTARY INTOXICATION

Voluntary intoxication is a defense to specific intent crimes only if defendant voluntarily took a substance reasonably certain to cause intoxication without duress. The ingesting of the intoxicating substance must cause defendant to be unable to form the necessary intent to commit the crime. Here, Defendant drank heavily in the bar and became intoxicated before assaulting Grace. If it is proven that his intoxication did not allow him to reach the necessary mens rea to intend to assault Grace, he will be excused for his criminal act.

BATTERY

Battery is the unlawful intentional application of a harmful or offensive contact to the victim or victim's person. Here, Tony walked up to Grace and grabbed her wrist while shouting verbal bodily threats. The grabbing of Grace's wrist will likely cause a reasonable person in Grace's position to suffer an offensive or harmful contact. Tony will be reasonably charged with battery.

DEFENSES TO BATTERY

VOLUNTARY INTOXICATION

Defined supra.

Battery is a general intent crime. Therefore, even if Defendant was unable to reach the necessary mens rea due to his intoxication he will not be excused for his battery of Grace. The defense of voluntary intoxication will fail.

MERGER DOCTRINE

The merger doctrine will find the lesser crimes merge into the more serious crime if all elements of the lesser crime are included in the more serious. Here, if Defendant is convicted of the more serious crime of robbery, the crimes of assault, battery, and larceny will be merged in the crime of Robbery.

ROBBERY

Robbery is the unlawful taking and carrying away of the personal property in the victim's presence, by force or fear of physical bodily harm, with the intent to permanently deprive that person of the personal property. Here, Tony used the threat of bodily harm by stating "don't make me hurt you" in his attempt to steal Grace's necklace that she was wearing around her neck. Because Tony's used threat of physical harm to Grace will intending to take the personal property from her while the property was around her neck, he will have

satisfied the elements of robbery. Defendant will be reasonably charged with Robbery.

DEFENSE OF ROBBERY

VOLUNTARY INTOXICATION

Defined supra.

Robbery is a specific intent crime. If it is determined that Tony was unable to reach the necessary intent required for Robbery due to his intoxication he may be excused from his criminal act.

2. STATE V. GRACE

ASSAULT

Defined supra.

Here, Grace has grabbed a handgun from behind the counter of her store and fired a shot at Tony. The act of pointing a gun and shooting in the direction of another with that gun will likely cause a reasonable person to find an imminent fear of death or great bodily harm. Therefore, Grace will be reasonably charged with assault.

DEFENSE TO ASSAULT

SELF-DEFENSE

Self-defense will justify a defendant's criminal act if defendant reasonably believed she faced imminent death or great bodily harm. The use of deadly force must be reasonable and defendant must not be the initial aggressor. Here, Tony who was in a fit of intoxicated rage has entered into Grace's store near closing time, physically assaulted her, and threatened her bodily harm. If defendant reasonably believed she was facing imminent death or great bodily harm, her use of deadly force will be justified. Therefore, Defendant will be reasonably charged with assault, but the crime will be justified by self-defense.

BATTERY

Defined supra.

Here, Defendant has shot Tony with a gun. The bullet hit Tony in the stomach, causing serious injury. A reasonable person in Tony's position would find that being struck with a bullet will constitute a harmful contact to his person. Grace will be reasonably charged with battery.

DEFENSE TO BATTERY

SELF-DEFENSE

Defined supra.

Here, Grace was grabbed, assaulted, and threatened after Tony has entered her store, while locking her inside. The prosecution will argue that the shooting of Tony was a justified use of reasonable self-defense because Grace is not the initial aggressor and she had reasonable belief that she was facing imminent death or great bodily harm at the hands of Tony. Therefore, Grace will be reasonably charged with battery, but her crime will be justified by self-defense.

ATTEMPTED HOMICIDE

ATTEMPT

Attempt is specific intent plus an overt act in furtherance of the crime. Attempt may be proven by the Dangerous Proximity Test.

DANGEROUS PROXIMITY TEST asks how close defendant came to completing the crime.

SPECIFIC INTENT

Here, Grace intended to shoot the gun towards Tony in order to thwart his attack on her. Shooting a gun at another person will foreseeably result in death or great bodily harm as

occurred here. Therefore, Grace had the specific intent to cause Tony death or great bodily harm. The element of specific intent is met.

OVERT ACT

An overt act is any act greater than mere preparation in furtherance of the crime. Here Grace has taken the gun out of the counter and pulled the trigger shooting Tony. This will satisfy the element of an overt act.

HOMICIDE

Homicide is the unlawful killing of another human being. Homicide may be murder or manslaughter. Here Grace has attempted to cause the death of Tony.

Therefore, Grace will reasonably be charged with Attempted Homicide for coming dangerously close to the completion of homicide.

ATTEMPTED MURDER

ATTEMPT

Defined supra.

MURDER

Murder is the unlawful killing of another human being with malice aforethought. Malice aforethought is:

1. the intent to kill
2. the intent to cause great bodily harm
3. acting with a reckless disregard to human life (a depraved heart or mind)
4. any death that occurs in the furtherance of an inherently dangerous felony.

Here, Grace has pulled a handgun she kept hidden behind the counter where she works and fired a shot at Tony, striking him. The prosecution will argue that hiding a gun will

satisfy intent to kill. In addition, the act of shooting a gun at another human being will with substantial certainty cause death or great bodily harm. Therefore, Grace will be charged with attempted murder.

DEFENSE TO ATTEMPTED MURDER

SELF-DEFENSE

Defined supra.

The prosecution will argue that the shooting of Tony was a justified use of reasonable self-defense because Grace is not the initial aggressor and she had reasonable belief that she was facing imminent death or great bodily harm at the hands of Tony. Therefore, Grace will be reasonably charged with attempted murder, but her crime will be justified by self-defense.

JUNE 2022

ESSAY QUESTION 3 OF 4

Answer All 4 Questions



California First-Year Law Students' Examination

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 situation 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 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 to the facts.

If your answer contains only a statement of your conclusions, you will receive little or no 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 that are not pertinent to the resolution of the issues raised by the call of the question.

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

QUESTION 3

Big Mart is a national chain of large stores selling various products, including board games. Helen owns a small business wholly focused on the production of a popular board game she invented called "REACHING THE GOAL," in which players overcome obstacles to reach the end of a journey before the other players.

Big Mart wants to sell Helen's game for \$20 in all of its stores over the next six months. Helen tells Big Mart that because she can easily hire more employees, which is true in her area, she estimates she can produce 10,000 units per month for six months. That estimate was included in a valid written contract for the purchase by Big Mart of as many units as Helen can produce each month during the next six months, for a price of \$10 each.

Because no other party can provide the games, and lost profits could be difficult to predict, the contract includes a \$25,000 liquidated damages clause in favor of Big Mart in the event of Helen's breach.

During the first three months of the contract period, Helen often went away on vacation. Since she was not paying attention to her business, she failed to hire the employees she could have, and only produced 8,000 units during the first three months of the contract term. After those three months, Big Mart demanded in writing that Helen confirm her ability to produce more, but she did not reply. During the fourth month, Helen produced only 2,000 more units, and Big Mart now wants to get out of the contract.

1. What contract claims, if any, may Big Mart make against Helen; what defenses, if any, may Helen assert; and what is the likely outcome? Discuss.
2. If Big Mart prevails, what damages, if any, should it be awarded? Discuss.

QUESTION 3: SELECTED ANSWER A

Big Mart v Helen

Applicable Law

The Uniform Commercial Code (UCC) governs contracts where the subject matter is the sale of goods, while the common law governs all others. The current contract is regarding Big Mart purchasing Helen's game to then in stores over the next six months. Since this contract is regarding the sale of a board game, the UCC will govern it.

Merchant

A merchant is one who regularly deals in the goods or through occupation has knowledge and skills peculiar to the goods involved. Here Big Mart is a national chain of large stores selling various products, including board games. Helen owns a small business that produces a popular board game. For the purpose of this contract, both Big Mart and Helen will be considered merchants since the contract's subject matter is board games.

Contract

A valid contract consists of an offer, acceptance, and consideration. The fact pattern indicates that there is a valid written contract for the purchase by Big Mart of as many units as Helen can produce each month during the next six months, for a price of \$10 each.

Statute of Frauds

The Statute of Frauds (SoF) is designed to prevent fraudulent claims of contracts by requiring proof of a contract for certain type of contracts. Those contract types are: marriage contracts; service contracts that cannot be completed within a year; contracts

for the sale of interest in land; contracts for the sale of goods in excess of \$500; and suretyship contracts. The present contract is regarding the sale of goods. Here it is board games for \$10/a game. Helen estimates that she can produce 10,000 games/month. As a result, this contract will be for goods in the excess of \$500. Thus, this contract falls within the SoF. The fact pattern indicates that there is a valid written contract. As a result of the contract being written, it satisfies the SoF.

Implied Warranty of Good Faith and Fair Dealing

All contracts have an implied warranty of good faith and fair dealing, meaning that all parties will act in good faith to perform their duties and be fair in their dealings with each other. Big Mart will likely argue that Helen breached the implied warranty of good faith and fair dealing. Helen told Big Mart that she could easily hire more employees and estimated that she could produce 10,000 units/month. This estimate was included in the written contract. During the first three months, Helen often went out of town, did not pay attention to her business, and did not hire the employees that she could have. As a result, she only produced 8,000 units in this time period, even though her estimate was 30,000 units during a three-month period. Big Mart will contend that Helen did not act in good faith when she did not pay attention to her business and did not hire the employees that she could have. Helen will likely argue that the contract did not state that she could not go on vacation, so she did not breach any warranty. Big Mart has likely proven that Helen breached the implied warranty of good faith and fair dealing.

Prospective Inability to Perform

When a party to a contract has reasonable doubts of the other party and their ability to perform, the doubting party may ask for reasonable adequate assurances that the other party will be able to perform their duties in the contract. If the doubting party does not receive adequate reasonable assurances, they may treat the contract like an anticipatory

repudiation and sue for breach. After Helen only produced 8,000/units in the first three months of the contract even though her estimate was 30,000, Big Mart had reasonable doubts that Helen would be able to perform. As a result, Big Mart sent Helen a writing that demanded reasonable assurances that she could produce more. Helen did not reply to the request for reasonable assurances. Then during the fourth month, Helen produced 2,000/units, which was 8,000 less than her estimate. Since Big Mart did not receive adequate assurances from Helen and her production continued to be significantly lower than her estimate, Big Mart is able to treat this as a breach and sue.

Breach

When one party fails to perform their contractual duties, there is a breach to the contract. According to the written, valid contract between Big Mart and Helen, Helen estimated that she would produce 10,000 units/month. Helen did not produce the amount of units that was included in the contract. Thus, Helen breached the contract.

Material Breach

A material breach is when the non-breaching party has not received their substantial benefit. Helen's estimate was that she would produce 10,000 units/month. In the first three months, she only produced 8,000 total units. Then in the fourth month, she only produced 2,000 more units. In that time period, she should have produced 40,000 units and she only produced 10,000. This is about 25% of the estimated units that Big Mart was to have purchased. 25% of the benefit Big Mart should have received is not a substantial portion. Additionally based on Helen's performance over four months, it was not likely that she would produce the amount contracted in the next two months. Helen will likely argue that the 10,000 units/month was just an estimate and she cannot be held to it. Big Mart will contend that her estimate was part of the written, valid contract and her production was required to be substantially similar to her estimate. Thus, Big Mart has

likely proven that Helen's breach is a material breach.

Impossibility

Impossibility is judged on an objective standard and means that no one can perform the contract. Helen will likely argue that it was impossible to perform her duties as outlined in the contract. She did not have enough employees to produce 10,000 units/month. Big Mart will contend that impossibility is based on an objective standard, meaning that no one could perform the contract. Big Mart will further contend that Helen could have hired more employees based on the area where she was located. If Helen had hired the available employees, she could have produced the estimated output per month. Helen has not likely proven that her duties were discharged by impossibility.

Impracticability

Impracticability is based on a subjective standard. That standard is that due to unforeseen circumstances the party can no longer perform due to significant changes. Helen will likely argue that due to an insufficient amount of employees, that she is unable to produce the estimated amount of units per month and it is impracticable for her to perform her contractual duties. Big Mart will likely contend that the reason Helen had an insufficient amount of employees was due to her going on vacation often and not paying attention to her business. Had Helen paid attention to her business she could have hired additional employees. Helen has not likely proven that her duties were discharged by impracticability.

Remedies

Liquidated Remedies

Liquidated remedies are a clause in the contract that state the damages owed by the breaching party. Liquidated damages are used when it is difficult to forecast the damages. The valid, written contract between Big Mart and Helen stated that in the event

that Helen breached the contract, liquidated damages would be \$25,000. Big Mart will likely argue that they should be awarded these damages because it would be difficult to predict their lost profits and game is only available through Helen. Helen will likely argue that \$25,000 is an excessive amount for damages. Big Mart will point out that they bought the game from Helen for \$10/game and sold them for \$20/game. Had Helen performed the contract, they could have made up to \$10/game on 60,000/games. Big Mart has likely proven that \$25,000 is a reasonable forecast of their damages.

Specific Performance

Courts do not tend to award specific performance unless the contract involves rare or unique goods. Here Helen is the only producer of the game that she contracted with Big Mart to sell to them. Thus, she is the exclusive provider of the game. The court may find that Helen has to produce the units owed Big Mart as a result of her being the only one able to produce them.

Expectation Damages

Expectation damages are where the court places the plaintiff in the same economic position that they would have been in had the contract been fully performed. Here it is difficult to forecast how many games customers would have purchased at Big Mart. Thus, expectation damages are not appropriate here.

Reliance Damages

Reliance damages are where the court places the plaintiff in the same economic position that they would have been in had the contract never existed. Reliance damages would not be appropriate here due to the nature of the contract involving buying and then selling goods to customers.

Restitution Damages

Restitution damages are where the court places the defendant in the same economic

position that they were in prior to the contract. Restitution damages would also not be appropriate due to the nature of the contract, where Big Mart purchased games from Helen and then sold them to customers.

QUESTION 3: SELECTED ANSWER B

1) Big Mart v. Helen

Governing Law

Contracts for the sale of goods are governed by Article 2 of the Uniform Commercial Code (UCC). Goods are defined as things that are moveable at the time of contracting. All other contracts are governed by common law principles.

Here, the agreement was for the sale of a popular board game that was invented by Helen. The game is a product that may be produced and possessed and is a tangible item that is moveable.

Thus, the contract is governed by the UCC

Merchant

A person who deals in goods of the kind or who by his occupation holds himself out as having the knowledge and skill peculiar to the goods or practices involved in the transaction.

Here, Big Mart is a national chain of stores selling various product including board games and Helen owns a small business focused on the production of a popular board game she invented called "REACHING THE GOAL." Both would classify as merchants under the UCC, for both deal in the production and sale of games for their businesses.

Thus, both parties are merchants.

Contract Formation

A valid and enforceable contract requires 1) offer 2) acceptance 3) consideration and 4) no defenses to formation.

Offer

The manifestation of willingness to enter into an agreement, that gives the offeree reason to conclude that his assent will close the deal. Must include definite terms.

Under the UCC, quantity is required. The exception applies for requirements and outputs contracts in which a seller promises to purchase all the products produced that the seller can produce and the buyer agrees to purchase from the seller.

Here, Big Mart and Helen have a valid written agreement for an outputs contract in which Helen agrees to sell all the games she can produce for Big Mart for \$10.00 each. The requirements contract is an exception to the UCC requirement for quantity, provided that the quantity is not unreasonably disproportionate to the seller, and the quantity is established in good faith. Here, there is a valid agreement that is not disproportionate to Helen's outputs, for she stated that she is estimated to produce 10,000 units per month for 6 months, which was included in the written agreement. Thus, the good faith that she can produce that amount is required under the contract.

Thus, there is a valid offer.

Acceptance

The unequivocal assent to the terms of the offer communicated to the offeror in the manner invited by the offer.

Here, the facts state that there is a valid agreement for the purchase of the games for the amount that Helen can produce; thus, it is reasonable to assume that a valid agreement was in place and the parties accepted the agreement in the manner invited, for the performance to commence.

Thus, there is a valid acceptance.

Consideration

A bargained for exchange of legal value that is a benefit to the promisor and a detriment to the promisee.

Here, the facts indicate that there was a value reciprocal inducement of promises in which Big Mart promises to purchase the goods and in which Helen promise to produce a reasonable amount of the goods requested in good faith based on the estimate she provided. The consideration was bargained for and not in a gift manner. Helen will argue that the contract does not have valid consideration, for the promise was illusory and did not manifest an intent to be bound, Big Mart will have a valid defense that the contract was not illusory, for the implied obligation of good faith under Article 2 for the requirements and outputs agreement between parties, in which the quantity, although not stated, could be reasonably found, and the agreement is not illusory, for there is a promise to be bound to the agreement by Big Mart.

Thus, there is valid consideration.

Installment Contract

In which there is a single contract in which performance can be rendered in separate parts.

Here, there is a single agreement in which there is performance that can be rendered in separate parts, that Big Mart can perform by paying for the goods and Helen can perform by providing the goods on a month-to-month basis, rather than performance being rendered all at once.

Thus, there is a valid installment contract.

Defenses

Statute of Frauds

Contracts for the sale of goods over \$500.00 under the UCC must be in writing.

Here, the contract is for the sale of the board games for \$10.00 each for an estimated quantity of over 10,000 for the total six months. Therefore, the statute of frauds is an applicable defense, but because there is a signed writing, the contract is taken out of the statute of frauds.

Thus, this is not a valid defense.

Thus, because all the elements of contract formation are met, there is a valid contract.

Breach

Occurs when a party fails to perform under an agreement. A promise is when a party commits to perform or refrain from doing something they are legally allowed to do.

Condition Precedent is an event not certain to occur, which must occur before an absolute duty to perform arises.

Here, Big Mart will argue that Helen is in the breach of contract when she failed to hire employees and failed to produce the requested amount under the contract. The contract had a good faith obligation under the estimate that she could produce 10,000 units per month for 6 months, in which there was a reciprocal promise by Big Mart to pay, but Helen went on vacation and did not hire the workers and only produced 8,000 units during the first three months total. Thus, a serious decrease in the value expected for Big Mart. The production of the proper requirements was a condition precedent to Big Mart's obligation to perform under the contract. Because the contract is an installment contract, the entire contract may not be breached until one or more non-confirming installments affect the value of the whole contract. Here, there was four months of non-confirming performance that was rendered by Helen, which was for the overall 6-month contract that they had agreed to. Thus, there was an unlikely reasonable understanding that Helen

would not be able to cure the estimated quantity that she was to perform.

Thus, there a breach of the first four installments under the contract.

Prospective Inability to Perform

When a party has reasonable grounds to believe that the other will not perform when performance is due. May request adequate assurance.

Here, during the first three months of the contract, Helen often went on vacation. She only produced 8,000 in the first three months; and Helen produced 2,000 in the fourth month.

Thus, Big Mart had reasonable grounds to believe that in the following months in which performance would be due, she would not be able to perform under the agreement.

Thus, Big Mart had reasonable grounds to request adequate assurances of performance by Helen.

Adequate Assurances

Under the UCC, a party may request adequate assurance of performance in writing and must wait 30 days for adequate assurances, and the non-repudiating party may suspend their own performance until assurances are given.

Here, Big Mart has requested in writing under the UCC for the adequate assurance of performance by Helen that she will produce to the level of the requirements that were placed in good faith, between them. Helen declined to reply to the letter and during the fourth month only produced 2,000 of the games. Big Mart will argue that they had waited the required 30 days under the contract to receive adequate assurances of performance and the performance of the 2,000 was inadequate for the remainder of the contract. Thus, they may treat the failure to assure as a repudiation of the contract, and have grounds to terminate the agreement and sue for damages.

Perfect Tender Rule

Under the UCC, a buyer has a right to perfect tender of the goods or, if the tender of delivery fails in any respect, the buyer may accept the goods, reject the goods, accept any commercial units and reject the rest. Under an installment contract, the installment is breached when the delivery or tender of non-conforming goods substantially affects the installment and cannot be cured, and the entire contract is breached when one or more non-conforming installment affects the overall value of the contract.

Here, Big Mart has a right to perfect tender, the installments of the goods and the tender of delivery failed in respect to every month in which the parties were contracted. Helen will argue that she had not breached the contract, but had delivered as many of the installment as she produced; thus, there could be no breach. In which Big Mart will have a valid defense that the written agreement gave the estimated value that Helen herself stated that she could produce. The good faith agreement did not include an estimated value, but was for all the products that were produced. Thus, by drastically failing to come close to the stated number, Helen substantially deprived Big Mart of the value expected.

Outcome

Thus, because there is a valid contract, that has been breached by Helen for failing to provide the requirements under the contract, and more than one installment has been non-conforming with a failure to assure Big Mart that the performance being rendered will be adequate, it is likely that Big Mart will succeed in the breach of contract claim against Helen.

Defenses

Substantial Performance

When a party substantially performs under a contract but breached in a minor way, the other party is estopped for not performing.

Here, Helen will argue that she substantially performed under the contract, by producing as many games as she did. This argument will likely fail because Big Mart is substantially deprived of the benefit of the bargain they expected to receive.

Waiver

When a condition beneficiary expressly states or communicates by conduct that they will still perform under the contract, even though the other party has failed to perform their duties, in satisfying the condition.

Helen will argue that she failed to produce close to the required 10,000 that was estimated by her in the agreement, but Big Mart did not object to her quantity that was produced in the first and second months, as she was performing. Thus, Helen will argue that Big Mart waived the condition of the estimated 10,000, and that Helen detrimentally relied on it. Big Mart will argue that the contract was an installment contract, there was still time to cure under the installment for Helen to possibly produce the goods that she was required to produce. But under her uncooperative conduct of failing to hire help to meet the quantity expressed and choosing to go on vacation rather than work, it is unlikely that Helen's defense of waiver will stand, for an installment contract is breached only after one or more installments were non-conforming.

Thus, this defense will not.

Impossibility

Performance is discharged when an event occurs after formation that renders the performance objectively impossible, meaning no one can perform.

Here, Helen will argue that her performance under the contract was impossible to perform. Big Mart will argue that her performance was not impossible, for Helen told Big Mart that she can easily hire more employees. That was true in her area, but she failed to hire the employees. Thus, the event occurring of her not being able to perform was under her own risk.

Thus, impossibility will not discharge performance.

Impracticability

Performance is discharged when an event occurs after formation that renders the impracticable, i.e., unduly burdensome, the party seeking discharge must not have been at fault of the event occurring.

Here, Helen will argue that performance under the contract was impracticable for her to hire new help to be able to complete performance under the contract. Big Mart will argue that she estimated the quantity, thus she

2) Damages

Liquidated Damages Clause

Is enforceable when the damages are hard to calculate at the time of formation. They are not to cause penalty to any party.

Here, the contract included a clause in which Helen was to pay \$25,000 in favor of Big Mart in the event that Helen breaches. Helen would argue that the liquidated damages clause is a penalty that is unreasonable in light of the damages. However, it was unlikely that Big Mart would be able to anticipate the damages of putting the games on the shelves in the event that Helen would breach. But there is a valid argument to be made that Helen is a small business owner and that Big Mart would be in a better position than Helen. Thus, in the event of breach, Big Mart would not get the product but the \$25,000 is

set as an unreasonable penalty in light of the agreement. Big Mart will argue that the contract had an estimated value of roughly \$100,000 per month that Helen could have profited had she performed. Thus, the \$25,000 is not unreasonable and should be enforced.

Thus

Expectation Damages

Place the non-breaching party in as good of a position they would have been in had the contract been fully performed.

Here, the contract was for 10,000 for six months in which Big Mart would sell the games in the store for \$20, thus gaining a \$10 profit from each game. In order to place Big Mart in the position they would have been in for an estimate of 10,000 boards for 6 months, the expectation damages would be the difference in the boards that were received from the amount of the boards that were not produced. That would place Big Mart in the position they would have been in had the contract been performed.

Cover

When the buyer is able to obtain substitute goods from another seller.

Here, it is unlikely that Big Mart will be able to get a cover for the goods because the goods are unique and invented by Helen. Thus, no other store would likely sell them.

Specific Performance

A court order in which a party is ordered to perform to satisfy the performance under the contract. Requires: Definite and certain contract terms, Inadequacy for damages, Feasible enforcement, Mutuality of performance, Satisfaction of plaintiff's conditions, No unfairness.

Here, there was a valid agreement in which Helen is a small business owner who invented a game that was called Reaching the Goal; the game is unique and not sold by any other seller. Thus, the court would likely grant the order for her to perform by selling the unique goods. Even though there is a liquidated damages provision, the provision does not make the damages adequate and the performance can still be rendered that would not cause unfairness to Helen, for she was already under agreement to perform in the quantity that she stated she could. Furthermore, there would not be added pressure to the court to perform. Thus, Big Mart could be granted specific performance.

JUNE 2022

ESSAY QUESTION 4 OF 4

Answer All 4 Questions



California First-Year Law Students' Examination

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 situation 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.

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If your answer contains only a statement of your conclusions, you will receive little or no 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 that are not pertinent to the resolution of the issues raised by the call of the question.

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

QUESTION 4

Carol worked at a local bank. Her roommate, Brian, lost his job and needed money for rent. Carol suggested that Brian come to the bank and pass a note to the clerk at the teller window closest to the door, demanding \$1,000. Carol told Brian that the clerk who worked at that window was new and easily flustered, and would turn over the money to him without raising any alarm. In the meantime, Carol would distract the bank's security guard.

The next day, Brian arrived at the bank, passed the clerk the note, and received \$1,000. As Brian was leaving, the security guard became suspicious and withdrew his gun from its holster. The gun accidentally discharged, and the bullet struck and killed a bank customer.

During the commotion that followed, Carol removed \$20 for herself from the cash drawer at her own assigned bank teller window, thinking that no one would notice. Shortly later, she reconsidered and returned the \$20.

1. With what crimes can Carol reasonably be charged and what defenses, if any, can she reasonably raise? Discuss.
2. With what crimes can Brian reasonably be charged and what defenses, if any, can he reasonably raise? Discuss.

QUESTION 4: SELECTED ANSWER A

1. With what crimes can Carol reasonably be charged with and what defenses, if any, can she reasonably raise?

Solicitation

The incitement or inducement of another to commit a crime.

The State will argue that Carol suggested to Brian to pass a note to the clerk demanding \$1,000. Because the bank's \$1,000 is not Brian's, this is an illegal act.

Carol committed solicitation of Brian.

Conspiracy

Agreement between two or more persons to commit an illegal act, or to commit a legal act with criminal culpability.

Here, Carol suggested a plan for Brian to come to the bank and pass a note to the clerk demanding \$1,000, during which Carol would distract the bank's security guard (solicitation supra). The next day, Brian arrived at the bank, which is an overt act (as required by modern law) and an implied agreement to the plan.

A conspiracy is complete.

Pinkerton's Rule

According to Pinkerton's rule from the landmark case, the crimes committed by one co-conspirator are imputed onto fellow conspirators.

Any crimes that Carol commits, Brian will be held liable for, and likewise, Brian's crimes are imputed onto Carol.

Accomplice Liability - Common Law - Principal in the Second Degree

The common law categorizes accomplices to a crime as principals and accessories. A principal in the first degree is one who actually or constructively is present at the scene of the crime and performs the acts with his own hands. A principal in the second degree is actively or constructively present at the scene of the crime and aids or abets in the crime.

When Carol suggested that Brian demand \$1,000 from a clerk that was new and easily flustered, she put the plan into motion, which aiding and abetting the commission of the crime. It appears that Carol did not distract the guard because during the commotion that followed, she was at her own bank teller window because Carol worked at the bank. By being at the bank, Carol was actually present at the time of the crime commission.

Accomplice Liability - Modern Law

Under modern law, the categories are no longer used for accomplice liability and each party involved is simply called an accomplice. Since Carol suggested the details of the crime such as where, when and who to target, she would be considered an accomplice.

Larceny

Trespassory caption and asportation of personal property of another with the intent to

permanently deprive.

The facts state that Carol removed \$20 from the cash drawer at her own assigned bank teller window, which constitutes a taking (caption) and carrying away (asportation).

Further, she removed the \$20 (personal property) "for herself," which shows that she had the intent to permanently deprive the bank. Though shortly later, Carol can argue that she returned the \$20, once the caption and asportation is completed even a short distance or moment in time, the larceny has been completed.

Carol has committed a larceny.

Embezzlement

The taking and carrying away of personal property already in lawful possession with the specific intent to permanently deprive.

Carol removed for herself from the cash drawer at her own assigned bank teller window, therefore the State could argue that Carol was already in lawful possession of the \$20. It is unlikely that the State would consider Carol's position as a worker at a local bank as having constructive lawful possession over the money in the cash drawer because she has an entry level job that does not trust her beyond public duties at her window. Since Carol does not have the ability to assert dominion and control over the money in her drawer, she did not have lawful possession over it.

Carol has not committed embezzlement.

Defense - Withdrawal

The common law does not allow withdrawal from a conspiracy. The Modern Law is more liberal and will allow it as a defense if it is complete, voluntary, and communicated to all other co-conspirators.

Carol will argue that during the commotion, she was at her bank teller window and not distracting the guard, which is a complete withdrawal from the conspiracy. But, without notifying Brian, this will not be an effective withdrawal, and Carol will still be liable for all of Brian's crimes. Further, she did not make any attempt to thwart the conspiracy like tell the police or the guard.

Carol did not withdraw from the conspiracy.

Defenses

There are no other defenses for Carol.

2. With what crimes can Brian reasonably be charged and what defenses, if any, can he reasonably raise?

Conspiracy

See supra – Carol.

Pinkerton's Rule

See supra - Carol.

Accomplice Liability - Common Law - Principal in the First Degree

See definition supra - Carol.

When Brian arrived at the bank and passed the clerk the note, receiving \$1,000 and started to leave, he performed the task by his own hands by volitional acts.

Brian is a principal in the first degree.

Accomplice Liability - Modern Law

See definition supra - Carol.

Brian is an accomplice.

Common Law Burglary

The breaking and entering of the dwelling house of another in the nighttime with intent to commit a felony therein.

Brian arrived at the bank while Carol was working. Therefore, the building was open and no breaking was needed. However, when a person enters the building under false assertions of being a customer, this can constitute a breaking. Since Brian was inside the bank, it can be inferred he entered. The bank is not a dwelling house of another, which negates Brian's criminal liability. Brian entered the building with the intent to commit a felony (robbery) therein.

Modern Law Burglary

Entering a structure with the intent to commit a crime therein.

Brian entered the bank, which is a structure, for the purpose of committing a robbery (or at least larceny, infra).

Modern law burglary elements are met, Brian is guilty of modern law burglary.

Larceny

Trespassory taking and carrying away of personal property of another with the intent to permanently deprive.

If the State cannot prove that Brian used force (infra - robbery), they will instead assert that he committed a larceny, which is a lesser charge than robbery.

If they hold him liable for larceny instead, the State will assert a charge for grand larceny, which might be a felony in the jurisdiction.

Robbery

Trespassory taking and carrying away of the personal property of another by force or threat of force with the intent to permanently deprive.

Brian passed the note to the clerk and received \$1,000 before he started to leave, which constitutes a taking and carrying away. The facts do not disclose whether the clerk passed the money under threat of force.

The State will argue that something made the security guard become suspicious; therefore Brian may have made some exertion of threat. Brian intended to keep the money as shown by him started to leave the bank; therefore he had the intent to permanently deprive the bank.

Homicide

The killing of a human being by another human being. Must show actual and proximate cause that the perpetrator's acts caused the killing.

Actual Cause

But for Brian taking money at the bank, the security guard would not have been suspicious when he withdrew his gun from its holster.

Proximate Cause

It is foreseeable that a robbery, even a quiet one, could bring harm to others. Brian will argue that the security guard's gun "accidentally" went off. Therefore, the accident was a superseding cause, relieving Brian from liability.

Murder

Homicide done with malice aforethought. Malice aforethought consists of four mens reas: intent to kill, intent to cause grave bodily harm, reckless disregard for the unjustifiably high risk to human life (depraved heart murder, also called willful and wanton), and killings done in the commission of an inherently dangerous felony.

The State will argue that Brian committed an inherently dangerous felony of robbery, which would suffice for murder (see further infra). If the State could not illustrate felony murder, it can assert depraved heart murder (willful and wanton).

First-Degree Murder

A killing done with express malice, intending to kill, with premeditation or deliberation, or during the commission of a felony.

Felony Murder

The common law follows the Proximate Cause Approach, and will hold all felons liable for the killings of co-felons, innocent bystanders or police officers done by innocent parties or police officers.

When Brian took the \$1,000 from the teller, causing the security guard to become suspicious, the guard withdrew his pistol. The gun accidentally discharged and the bullet struck and killed a bank customer. The State will argue that Brian made the dangerous atmosphere to cause the death of an innocent person, and hold him liable.

Brian is guilty of felony murder under the common law.

Special Felony Murder Rule - Redline Decision

The modern law (majority) trend uses the Agency Approach, and holds that only killings of fellow co-felons will be imputed onto the felons. Here, because Brian (felon) was leaving the bank when the security guard (non felon) killed a bank customer (non felon), the killing was not done by a felon.

Under the majority rule, Brian would not be guilty of felony murder.

Second-Degree Murder

All other murder that is not first-degree.

If it is determined that Brian will not be held liable under the felony murder rule, the State will assert that he had a willful and wanton (depraved heart) mens rea, and charge him with second-degree murder.

Defense - Necessity

Brian will assert that he lost his job and needed money. Brian getting money from the bank is not a greater good than the life of the bank customer. Further, no natural cause brought about the need for Brian to rob a bank, and so, this defense will not prevail.

QUESTION 4: SELECTED ANSWER B

1. WITH WHAT CRIMES CAN CAROL BE CHARGED AND WHAT DEFENSES?

STATE (S) V. CAROL (C)

SOLICITATION

Requesting, inciting or inducing another to commit a crime with specific intent that the crime be completed.

Here, the facts stipulate that C suggested to B that he come to the bank to commit a robbery. Further, the facts indicate that C had a direct interest in B completing the robbery because he was her roommate and he needed money for rent. Therefore, it appears there is motive indicative of intent to complete the underlying crime.

C solicited B.

CONSPIRACY

An agreement between two or more people to commit an unlawful act or to commit a lawful act by unlawful means.

Once C had solicited B's help, upon B's agreement, as indicated by his conduct of participating in the robbery, became a conspiracy between C and B.

C will be charged with conspiracy to commit robbery.

PINKERTON'S RULE

Pursuant to United States v. Pinkerton, any participant in a conspiracy may be held liable

for all crimes in furtherance of the conspiracy or for any foreseeable outgrowths of the conspiracy.

Here, as discussed supra, B and C have formed a conspiracy, so they will be liable for all foreseeable crimes under the Pinkerton Rule.

The Pinkerton Rule applies.

DEFENSE - WITHDRAWAL FROM CONSPIRACY

Under common law, once the conspiracy has formed, there is no withdrawal defense. Modernly, courts want to encourage withdrawal before a crime is completed, and will allow it when done in good faith, voluntarily, and remorsefully.

There are no facts to indicate that C attempted to withdraw from the conspiracy. Rather, C committed an additional crime even after the customer died. Such conduct lacks in remorse and will not support a defense of withdrawal.

ROBBERY

Trespassory taking and carrying away of the personal property of another with intent to permanently deprive, through force or threat of force.

Here, when B brought a threatening note to the window and demanded \$1,000 from the teller, he committed a trespassory taking because the facts indicate that he did not have \$1,000 to his name. Further, because the taking involved a threat, it was not occurring in the normal course of events or within the teller's consent to B.

Moreover, because the facts indicate that B intended to leave, we can infer that B did not intend to return the money unless forced to do so, so there is an intent to permanently deprive.

Thus, C will be charged with robbery as a co-conspirator and accomplice.

ACCOMPLICE LIABILITY

An accomplice is one who aids, abets, or encourages the commission of a crime and intends that the underlying crime be completed.

Here, C aided B when she suggested that he commit a robbery of the bank where she worked. She further aided by providing inside information about which teller would be most likely to give the money without retaliating. Under common law, such aid would be sufficient to constitute aiding and abetting. Under modern principles and the MPC, actual assistance is not even required, so under both jurisdictional rules, it appears that C has aided and abetted.

C is an accomplice to B's robbery.

EMBEZZLEMENT

Unlawful conversion of the personal property of another by one who is already in lawful possession of it.

There is a jurisdictional split with respect to whether or not a bank teller has possession of the funds in their drawer or whether they have mere custody of those funds. Such would indicate a rule split and would determine whether C would be charged with embezzlement or larceny. In this case, there was certainly a taking and the intent to permanently deprive at the time of the taking. The fact that C later reconsidered and returned the money will not negate the already completed crime.

C will be charged with embezzlement depending upon the jurisdictional rule.

LARCENY

Trespassory taking and carrying away of the personal property of another with intent to permanently deprive.

C will be charged with either larceny or embezzlement depending upon whether she had lawful possession at the time she took the cash from the drawer or whether she had mere custody of the cash. The fact that she later reconsidered and returned the money does not negate the fact that there was a completed crime.

C will be charged with larceny depending upon the jurisdictional rule.

HOMICIDE

Killing of a human being by another human being.

Here, the facts say that the bullet struck and killed a bank customer.

Thus, there is a homicide.

ACTUAL CAUSE

Defendant's conduct must be the actual cause of the killing.

Here, guard would not have reached for the gun if it did not become suspicious of B's behavior which ultimately resulted in the accidental discharge.

Because C is a co-conspirator and accomplice, C will be liable for killings done by B (see *infra*).

PROXIMATE CAUSE

Defendant's conduct must be the actual cause of the killing.

Here, it is foreseeable that if robbing a bank that a security guard might attempt to stop it

and a bystander may be killed.

B will argue that a guard's suspicion and improper handling of the firearm are independent, superseding causes that will break the chain of proximate causation.

However, this argument will likely fail because it is foreseeable that a guard might get nervous or make an error when responding to a robbery.

While not certain a court would come to this conclusion, B is the proximate cause of the killing.

Thus, as accomplice and co-conspirator, C will be liable for the killing.

MURDER

Unlawful killing of a human being with malice aforethought. Malice can be express as intent to kill or implied through intent to inflict grievous bodily injury, recklessness to an unjustified risk to human life, and a killing which occurs during the commission of an inherently dangerous predicate felony.

Here, the facts could possibly support a finding of murder is for the killing which occurred during the commission of a robbery, which classifies as an inherently dangerous predicate felony. Alternatively, there may be conduct which rises to the level of recklessness, wanton or willful, sufficient for a finding of implied malice.

C will be charged with murder.

FIRST-DEGREE MURDER

Unlawful killing with premeditation and deliberation, and depending upon the jurisdiction, for felony murder.

Here, if the jurisdiction considers felony-murder to be first-degree murder, C will be

charged with first-degree murder.

SECOND-DEGREE MURDER

All murder that is not first-degree murder.

Here, if the jurisdiction classifies felony murder as second-degree murder, C will be charged with second-degree murder.

INVOLUNTARY MANSLAUGHTER

Unintentional killing of a human being with criminal negligence, during the commission of a malum in se misdemeanor, or non-dangerous felony.

Here, if the court does not apply the felony murder rule to the killing, they may fall back on involuntary manslaughter as B and C's conduct likely constituted at least criminal negligence. That is, disregard of a substantial and known risk.

C will be charged with involuntary manslaughter.

2. WITH WHAT CRIMES CAN BRIAN BE CHARGED AND WHAT DEFENSES?

STATE (S) V. BRIAN (B)

CONSPIRACY

An agreement between two or more people to commit an unlawful act or to commit a lawful act by unlawful means.

Once C had solicited B's help, upon B's agreement, as indicated by his conduct of participating in the robbery, became a conspiracy between C and B.

B will be charged with conspiracy to commit robbery.

PINKERTON'S RULE

Pursuant to United States v. Pinkerton, any participant in a conspiracy may be held liable for all crimes in furtherance of the conspiracy or for any foreseeable outgrowths of the conspiracy.

Here, as discussed supra, B and C have formed a conspiracy, so they will be liable for all foreseeable crimes under the Pinkerton Rule.

The Pinkerton Rule applies.

DEFENSE - WITHDRAWAL FROM CONSPIRACY

Under common law, once the conspiracy has formed, there is no withdrawal defense. Modernly, courts want to encourage withdrawal before a crime is completed, and will allow it when done in good faith, voluntarily, and remorsefully.

There are no facts to indicate that B attempted to withdraw from the conspiracy.

ROBBERY

Trespassory taking and carrying away of the personal property of another with intent to permanently deprive, through force or threat of force.

Here, when B brought a threatening note to the window and demanded \$1,000 from the teller, he committed a trespassory taking because the facts indicate that he did not have \$1,000 to his name. Further, because the taking involved a threat, it was not occurring in the normal course of events or within the teller's consent to B.

Moreover, because the facts indicate that B intended to leave, we can infer that B did not

intend to return the money unless forced to do so, so there is an intent to permanently deprive.

Thus, B will be charged with robbery as a principal in the first-degree.

DEFENSE - NECESSITY

Conduct which would otherwise be criminal in nature may be privileged where done under the doctrine of necessity which requires a natural force which poses a threat to person or property, no reasonable legal alternative exists, the harm created is less than the harm avoided, and the defendant enters the circumstances with clean hands.

Here, B may argue that he needed money for rent and that he had no reasonable legal alternative to obtaining money through a bank robbery. However, S will counter that the harm created by the robbery far outweighed the harm avoided by paying rent after it becomes due. Further, if common law principles are applied, it could not be said that B has clean hands with respect to the circumstances that brought him to commit the robbery.

Defense of necessity will fail.

EMBEZZLEMENT

Defined supra.

There are no facts to indicate that B conspired with or assisted with C's taking from the register.

B will not be charged with embezzlement.

LARCENY

Defined supra.

There are no facts to indicate that B conspired with or assisted with C's taking from the register.

B will not be charged with larceny.

HOMICIDE

Killing of a human being by another human being.

Here, the facts say that the bullet struck and killed a bank customer.

Thus, there is a homicide.

ACTUAL CAUSE

Defendant's conduct must be the actual cause of the killing.

Here, guard would not have reached for the gun if it did not become suspicious of B's behavior which ultimately resulted in the accidental discharge.

B is the actual cause of the customer's death.

PROXIMATE CAUSE

Defendant's conduct must be the actual cause of the killing.

Here, it is foreseeable that if robbing a bank that a security guard might attempt to stop it and a bystander may be killed.

B will argue that a guard's suspicion and improper handling of the firearm are independent, superseding causes that will break the chain of proximate causation.

However, this argument will likely fail because it is foreseeable that a guard might get nervous or make an error when responding to a robbery.

While not certain a court would come to this conclusion, B is the proximate cause of the killing.

MURDER

Unlawful killing of a human being with malice aforethought. Malice can be express as intent to kill or implied through intent to inflict grievous bodily injury, recklessness to an unjustified risk to human life, and a killing which occurs during the commission of an inherently dangerous predicate felony.

Here, the facts could possibly support a finding of murder is for the killing which occurred during the commission of a robbery, which classifies as an inherently dangerous predicate felony. Alternatively, there may be conduct which rises to the level of recklessness, wanton or willful.

B will be charged with murder.

FIRST-DEGREE MURDER

Unlawful killing with premeditation and deliberation, and depending upon the jurisdiction, for felony murder.

Here, if the jurisdiction considers felony-murder to be first-degree murder, B will be charged with first-degree murder.

SECOND-DEGREE MURDER

All murder that is not first-degree murder.

Here, if the jurisdiction classifies felony murder as second-degree murder, B will be charged with second-degree murder.

INVOLUNTARY MANSLAUGHTER

Unintentional killing of a human being with criminal negligence, during the commission of a malum in se misdemeanor, or non-dangerous felony.

Here, if the court does not apply the felony murder rule to the killing, they may fall back on involuntary manslaughter, as B and C's conduct likely constituted at least criminal negligence. That is, disregard of a substantial and known risk.

B will be charged with involuntary manslaughter.