

Empire College of Law
Criminal Law Examination
Fall 2023
Prof. K. Pozzi

Instructions

1. This examination consists of three (3) questions.
2. There is a three (3) hour time limit to complete the exam.
3. Answer each question according to the times allocated by Prof. Pozzi.
 - Question 1 - 90 minutes
 - Question 2 - 45 minutes
 - Question 3 - 45 minutes
4. There are three essay questions. Make sure that you read each essay question carefully before answering. Attempt to organize your answer before you start writing.
5. The essay questions test your ability to apply the law to the facts. Use IRAC. After stating the issue, provide a succinct statement of the relevant legal principles, followed by a detailed analysis of how these legal principles apply to the facts and a conclusion.

Question 1- 90 minutes

Adam, unemployed, homeless and broke, convinced Bart, also homeless, that in order to get a head in life, they would need to rob a bank. Bart agreed as long as Adam would agree that no weapons would be used and no one would get hurt. Adam agreed.

The next day, Adam entered ABC Bank, while Bart waited outside as a lookout. Adam yelled out for everyone to “hit the floor and no one would get hurt.” The tellers and three of four customers in the bank complied, but Candice refused. Adam grabbed her by the arm and through her to the floor. Candice popped right back up and slapped Adam so hard that he hit his head on a nearby desk that cut off the top of his ear. Bleeding and angry, Adam pulled out a gun and shot at Candice. The bullet missed her but ricochet off a wall hitting and killing Davey, a bank teller.

Hearing a gun shot, Bart ran into the bank and saw Adam holding a gun. Upset that Adam had a firearm despite their agreement, Bart, yelled out, “I want out and nothing to do with this.” Bart ran away from the bank.

Seeing an opportunity, Candice asked Adam if she can take part. Adam agreed and together, they opened Davey’s cash drawer, removed all of the money and left the bank.

What crime or crimes, if any, have been committed by Adam, Bart, and Candice? What defenses, if any, can Adam, Bart and Candice raise? Analyze fully and answer according to common law and modern law.

Question 2- 45 minutes

Angela, a bookkeeper, was fired from her job at Bob's Auto Repair. Bob, the owner, accused her of depositing funds from the company account to her own without permission. The funds were actually diverted electronically by Carl, Angela's ex-boyfriend and expert computer hacker, to get back at her for breaking up with him and refusing to pay him back a \$500.00 loan. Carl was able to access Bob's company computer by sneaking into the business late one night.

A week later, one evening while Angela was out, Carl snuck into Angela's house through a window in order to break into her computer and divert funds from her bank account to his own. While trying to hack into her computer, Carl heard the front door open. Fearing that Angela had returned home, Carl decided to take Angela's laptop as payment for the \$500.00 she owed him. He left through the window that he had entered.

The front door was actually being opened by Bob. Bob knew that Angela would be at her belly dancing lesson and went to Angela's to recoup the \$1,000 that he believed she had stolen from his company. Not finding any money, Bob decided to stage the home, as if there had been a burglary. He managed to open drawers, tip furniture over and destroy her ceramic cow statue collection.

While Bob was at Angela's house, Angela was actually at Bob's Auto Repair painting graffiti on the exterior to get back at Bob for her wrongful termination.

Carl did not successfully get into Angela's laptop.

What crime or crimes, if any, have been committed by Angela, Bob, Carl? What defenses, if any, can Angela, Bob, and Carl raise? Analyze fully and answer according to common law and modern law.

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Question 3- 45 minutes

Angelo was a fireman and received a call that there was a fire at 123 4th Street. Once he got to the address, he realized that this was the home of his ex-wife, Bea. Angelo made no attempt to put out the fire and let the home burn to the ground. The garage leading to the house was only partially engulfed when Angelo initially arrived. He could have saved the main structure.

Unbeknownst to Angelo, Charly, Bea's new Boyfriend, was sleeping in the house. Charly died of smoke inhalation before he could escape. Bea was able to escape and saw Angelo leaning up against his firetruck laughing while guzzling a bottle of tequila. Angry at Angelo, Bea grabbed a small statute from her neighbor Dave's home and started beating Angelo. Angelo was so drunk, he did not feel a thing and continued laughing. This further angered Bea and she pushed Angelo into the flames, while she jumped into the firetruck. Bea wanted to hide the firetruck in the hopes of getting Angelo fired. Bea had never driven before and immediately crashed the firetruck.

Angelo was intoxicated but managed to escape any serious injury and wobbled down the street toward his apartment located at 345 6th Street, apartment no. 7. In an intoxicated state, he wandered into apartment no. 8, mistakenly thinking that it was his own. Eddy was home in his apartment no. 8. Surprised by Angelo, Eddy kicked him to the curb.

What crime or crimes, if any, have been committed by Angelo, Bea, and Eddy? What defenses, if any, can Angelo, Bea, and Eddy raise? Analyze fully and answer according to common law and modern law.

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Question 1- outline and point rubric

People v. Adam

Solicitation-(to Bart to commit robbery)-3 pts.

Conspiracy-with Bart (to commit robbery)-5 pts.

Does solicitation merge with completed conspiracy?

What is the overt act needed modernly beyond the agreement itself?

Burglary--ABC Bank-5 pts.

Modern law. V. common law (nighttime, dwelling, breaking)

Attempted Robbery-bank customers and tellers (Candice?)-7 points

Define both attempt and robbery

Assault-tellers and bank customers-M.L. v. C.L) Candice? -5 pts.

Assault/Battery-pushed Candice to the floor-5 pts.

Attempted Murder/Voluntary Manslaughter-Candice-10 pts.

Was there a specific intent to kill required of an attempted crime?

Was there legally sufficient provocation to reduce to non-malice attempted voluntary manslaughter?

Can he claim self-defense?

Murder-Danny-10 pts.

Felony murder (implied malice)?

Mitigate to manslaughter (possible?)

Conspiracy- with Candace to commit a larceny/robbery)-5 pts.

Larceny/robbery- cash in Danny's cash drawer (with Candice)-5 pts

People vs. Bart

Conspiracy with Adam (to commit robbery)-5 pts.

Crimes of Adam that are natural and probable consequence of conspiratorial plan making him culpable for crimes of Adam? Or a deviation based on agreement that "no weapons would be used and no one would get hurt? Does later withdrawal exculpate him from crimes of Adam? -10 pts.

People v. Candice

Assault-on Adam-defense of self (justification)-5 pts.

Battery-on Adam-defense of self (justification)-5 pts

Mayhem- Malice? -defense of self (Justification)-5 pts.

Conspiracy -with Adam-to commit Larceny/robbery-5 pts.

Larceny/Robbery-Cash in Danny's cash drawer-5 pts.

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Question 2- outline and point rubric

People v. Angela

Malicious Mischief-Painting graffiti at Bob's Auto-10 pts
Malice (Property endangering state of mind?)

People v. Carl

Larceny- Funds from Bob's Auto- 10 pts.
Taking and carrying away movement?

Burglary- of Bob's Auto-10 pts.
Modern law. V. common law (nighttime, dwelling, breaking)
Intent to commit felony therein?

Attempted Larceny-Funds from Angela's Bank account-10 pts.
-claim of right defense?

Larceny-Angela's laptop-10pts.
-Claim of right defense?

Burglary-Angela's-10 pts. Open closed window/breaking? Is there a valid claim of right defense on larceny?
-M.L. v. C.L.?

People v. Bob

Attempted Larceny-\$1,000-10 pts
-Defense of claim of right/mistake of fact?

Burglary-Angelas home-10 pts
-C.L. v. M.L.?

Malicious Mischief- ceramic cow statute belonging to Angela-10 pts.
Was there malice (property endangering state of mind)?

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Question 3- outline and point rubric

People v. Angelo

Arson-Beas house-15 pts.

Was there malice/dwelling house endangering state of mind?

Was there a duty to act/negative acts/legal obligation to act?

Unlawful Homicide- Charly-20 pts.

Express vs. Implied malice

Wanton wilful and conscious disregard for human life/abandoned and malignant heart?

Felony murder?

Can this be mitigated to manslaughter- voluntary or involuntary?

Burglary—Eddy's home-10 pts.

Modern law. V. common law (nighttime, dwelling, breaking)

Intent to commit felony therein?

Can/does voluntary intoxication negate specific intent to commit felony therein?

People v. Bea

Assault- on Angelo (M.L. v. C.L) -beating him with statute and later pushing him into flames -10pts.

Defense of self, property, habitation

Is Angelo's laughing and not feeling a thing a defense?

Battery- on Angelo-beating him with statute and later pushing him into flames-10 pts.

Defense of self, property, habitation

Is Angelo's laughing and not feeling a thing a defense?

Larceny-Firetruck-10 pts.

Did she intend to permanently deprive firetruck owner of property?

In consideration of her never having driven, was the treatment of the truck in such a way that would render its return impossible or improbable tantamount to an intent to permanently deprive?

Malicious Mischief- firetruck-10 pts.

Was there malice (property endangering state of mind)?

People vs. Eddy

Assault-on Angelo-8pts.

-C.I. and M.I.

-defense of self, habitation (justification)

Battery-on Angelo-7 pts

defense of self, habitation (justification)

1)

ADAM (A)

WHETHER A COMMIT SOLICITATION WHEN HE ASKED BART (B) TO ROB A BANK?

SOLICITATION is the inciting counseling encouraging or soliciting another to commit a crime.

Here, A convinced B to rob a bank. Therefore, A would likely be found guilty of solicitation.

WHETHER A COMMIT CONSPIRACY WHEN HE AND B AGREED TO ROB A BANK?

CONSPIRACY is an agreement between two or more for an unlawful purpose. Modernly, an overt act in furtherance of the conspiracy is needed.

Here, both A and B agreed to rob a bank which is an agreement between two or more for an unlawful purpose (robbing a bank is unlawful) therefore A would likely be found guilty of conspiracy. A also entered the bank and made threatening statements which is a substantial act towards the commission of a robbery (the conspired act), therefore, A would likely be guilty of conspiracy under modern law too.

The above mentioned solicitation would likely merge with this conspiracy since B agreed.

Under the Pinkerton doctrine, all conspirators are guilty for the crimes of their co-conspirators if they are the natural and probable consequence of acts in furtherance of the original conspiracy. Therefore, B will also be guilty of all crimes that A commits before B withdraws.

WHETHER A COMMIT BURGLARY WITH THE INTENT TO ROB WHEN HE ENTERED THE BANK?

BURGLARY is the trespassory breaking and entering the dwelling house of another in the nighttime with the intent to commit a felony therein. Modernly, the trespassory entering of a structure with the intent to commit a felony or theft related offense therein.

ROBBERY is larceny accomplished through force, threat, fear or violence.

Larceny is the trespassory taking an carrying away of the personal property of another with the intent to permanently deprive them.

Here, A was trespassing since he did not have permission to enter the structure for the purpose of robbing the bank (discussion infra). He opened the door which is breaking and he entered. This is not a dwelling house however since no one sleeps here and A acted during the day time. While A was entering with the intention to commit a robbery (a felony), the fact that this was not a dwelling house nor at night mean that A cannot be found guilty of burglary under common law. However, these elements are not required modernly, therefore A could be found guilty of burglary under modern law.

WHETHER A COMMIT ROBBERY OR AN ATTEMPTED ROBBERY WHEN HE THREATENED BANK STAFF AND PATRONS?

ATTEMPT is an act beyond preparation and into the zone of perpetration and or a substantial step towards to commission of a target offense.

Here, a clearly intended to permanently deprive the bank or any of its tellers of money. He also entered the bank with a weapon and indicated his intention to use the gun when he told the patrons and teller that they may be hurt if they didn't comply. While he was unsuccessful in actually completing the crime (taking and carrying away), A took substantial steps to complete this crime by entering the bank and telling everyone to hit the floor. Therefore he could be found guilty of an attempted robbery.

WHETHER A COMMIT AN ASSAULT BY MAKING THREATENING REMARKS TO PATRONS AND BANK STAFF?

Assault is an attempted battery.

Attempt (supra)

Battery is the unlawful application of force upon another. Modernly its intentionally placing another in fear or apprehension of receiving a battery.

Here, A is armed and telling people they will be hurt if they don't hit the floor. He has a gun so A has taken substantial steps towards acting on his threat, therefore he would likely be found guilty under common law. Further more, his statements would cause a reasonable person to fear that they would be struck. Therefore this could be considered an assault of the bank staff and patrons under modern law too.

WHETHER A COMMIT AN ASSAULT WHEN HE REACHED FOR CANDICE (C)?

ASSAULT (supra)

Here, A grabbed C's arm. Presumably, she saw him reach for her arm before he actually grabbed her. If she saw, this would put a reasonable person in fear of being touched (battery). Therefore, A would likely be found guilty of assault under both modern and common law.

WHETHER A COMMIT A BATTERY WHEN HE THREW C TO THE GROUND?

BATTERY (supra)

here, A did not have C's consent to throw her to the ground so this was an unlawful act. He grabbed and threw her which means that force was applied. Therefore A would likely be found guilty of a battery. The above mentioned assault (common law) would likely merge with this battery since the attempt was completed.

WHETHER A COMMIT ASSAULT WHEN HE PULLED OUT A GUN AT C?

ASSAULT (supra)

Here, A took a substantial step towards committing a battery against C by pulling out a gun. Therefore A would likely be guilty of an assault under common law. Furthermore, since

having a gun pulled would cause fear, A would also likely be found guilty of assault under modern law.

WHETHER A COMMIT A BATTERY WHEN HE SHOT AT C?

BATTERY (SUPRA)

Here, there is no evidence to suggest C consented. However, the bullet ricocheted so there was no actual touching. Therefore A would likely not be found guilty of a battery.

WHETHER A COMMIT AN ATTEMPTED MURDER WHEN HE SHOT AT C?

ATTEMPT (SUPRA)

MURDER (INFRA)

Here, A clearly intended to kill C because that is typically why people pull the trigger at someone, so there is an express intent to kill. By shooting the gun, A took a substantial step towards killing C. Therefore, A would likely be found guilty of attempted murder of C.

WHETHER A COMMIT A HOMICIDE WHEN HE KILLED DAVEY (D)?

HOMICIDE is the killing of one human being by another human being which may be either lawful or unlawful. A lawful homicide would be perfect self defense or insanity. An unlawful homicide would be murder or manslaughter. Murder is the unlawful killing of another with malice aforethought. Malice is defined as a person endangering state of mind and may be express or implied. Express malice murder is the express intent to kill.

Here there is no evidence to suggest that A had an express intent to kill D therefore he would not be found guilty of express malice murder.

Implied malice is the unlawful killing of another with implied malice and may fall into one of three categories: GBI/SBI, wanton willful, and felony murder rule FMR. GBI/SBI is the intent to inflict great or serious bodily injury. Here, A did not have the intention of hurting D, he intended to hurt C therefore he would likely not be guilty under GBI/SBI. Wanton willful is a wanton willful act done with total and conscious disregard for the value of human life. Here, by firing a gun in a populated bank, A could be said to be acting wantonly and willfully with disregard for the value of human life. Therefore, he may be found guilty under a theory of wanton, willful murder. FMR is while the commission of a felony, death is the proximate result. Modernly, the felony needs to be inherently dangerous in the abstract so larceny is excluded. Here A was attempting to rob a bank. Robbery is a felony which is inherently dangerous because force or violence may be used therefore A could be found guilty under a theory of FMR under both modern and common law.

Manslaughter is the unlawful killing of another without malice. It may be voluntary or involuntary. Voluntary manslaughter is the intentional killing of another without malice and falls into three categories: heat of passion, imperfect self defense, and excessive force. Heat of passion requires that the person be acting out of passion not reason, adequate provocation, and no cooling off period. Here, A had just lost part of his ear in mutual affray, therefore it is reasonable that he was acting out of passion not reason, the loss of his ear would be adequate provocation, and the fact that it just happened means there was no cooling off period. Therefore, A's actions could be mitigated down to heat of passion.

Imperfect self defense is the subjective belief that its necessary to defend oneself even when that belief is objectively unreasonable. here, it could be argued that A was defending himself however there person he killed was not who he was defending himself from, so he likely would not be able to use imperfect self defense. Excessive force is when excessive force is used where the law would allowed some minimal force. Here A had just be attacked, but the recipient of his excessive force was not C, therefore he likely would not be able to mitigate his actions down to excessive force.

Involuntary manslaughter is the unintentional killing of another without malice. There are 2 kinds: criminal negligence which is while in the commission of a lawful act done without due caution and circumspection death is the proximate result. And misdemeanor manslaughter which is while in the commission of a misdemeanor or crime not amounting to a felony, death is the proximate result. There is no evidence to suggest either criminal negligence or misdemeanor manslaughter.

Under the murder's assailant rule, if an aggressor communicates his withdrawal to his victim, he can regain the right to self defense. Since A did not communicate a withdrawal of his attack to C, self-defense is not available to him.

Furthermore, while he may claim the defense of necessity to the his other crimes because he is broke and homeless and in need of money, necessity is never a defense to murder so he cannot use it for that crime.

WHETHER A COMMIT A CONSPIRACY WHEN HE AGREED WITH C TO COMMIT MORE CRIMES?

CONSPIRACY (supra)

Here, while the fact pattern does not specify what crimes they intended to commit, the fact that both A and C understood that they would be committing unlawful acts together means that this agreement would likely be a conspiracy. Since they actually succeeding in taking money from D's drawer, there is an overt act in furtherance of the conspiracy, therefore A and C would likely be guilty of conspiracy under modern law too.

WHETHER A COMMIT AN EMBEZZLEMENT OR LARCENY WHEN HE TOOK MONEY FROM THE DRAWER WITH C?

EMBEZZLEMENT is the fraudulent misappropriation of the goods of another by an agent or one to which the goods have been entrusted.

LARCENY (supra)

Under the Pinkerton Doctrine, A would be guilty of C's crimes if they are the natural and probable consequences of in furtherance of the original conspirator plan. Here, while it was unclear what specific crimes, they intended to commit, it's clear it related to taking money from the bank. Therefore, A would still be guilty for C's larceny (discussion infra).

BART (B)

WHETHER B COMMITTED CONSPIRACY BY AGREEING WITH A?

Conspiracy (supra)

Here, for the same reasons that A would be guilty of conspiracy, so would B.

In fact, the Pinkerton doctrine says that all conspirators will be culpable for the actions of their co-conspirators so long as they are the natural and probable consequences in furtherance of the original conspirator plan. Here, regardless of the fact that B believed that no weapons would be used, the actions of A are the natural and probable consequences of robbery since robbery is accomplished by force, threat, fear, or violence. Therefore B would also be guilty of the same crimes of A for the same reasons that A would be guilty.

WHETHER B EFFECTIVELY WITHDREW FROM THE CONSPIRACY?
Conspiracy (supra)

Here, B very clearly communicates to A his intention to withdraw and leaves the bank. Therefore, this was an effective withdrawal. Therefore, B is not guilty of the crimes A committed after this point in time. He is still culpable for the crimes committed up until this point, including conspiracy, burglary, attempted robbery, assault, battery, attempted murder, and homicide.

B may be able to claim the necessity defense given that he was homeless and broke. However, this would not be a defense to the homicide since necessity is never a defense to homicide. However, the other crimes A committed and B's participation in the conspiracy may be defended by necessity.

CANDICE (C)

WHETHER C COMMIT AN ASSAULT WHEN SHE SLAPPED A?

ASSAULT (SUPRA)

Here, C popped up and slapped A. This is a substantial step towards to commission of a battery since she actually succeeded in slapping A, therefore this is likely a common law assault. And when she raised her arm to slap A, she likely put A in fear or apprehension of being slapped, therefore this is also likely a modern law assault.

WHETHER A COMMIT BATTERY WHEN SHE SLAPPED A?

BATTERY (SUPRA)

Here, C slaps B which necessarily means that she applied force upon A. There is no evidence to suggest that A consented to this. Therefore C would likely be found guilty of battery. Since the battery was completed, the common law assault would likely merge with this battery.

However, for both C's potential assault and battery charges, C may claim self defense since A's entry of the bank and threatening comments would reasonable lead someone to believe that it was necessary to defend oneself. Therefore, C may not actually be guilty of assault and battery.

WHETHER C COMMIT MAYHEM WHEN A LOST HIS EAR?

MAYHEM is the malicious dismemberment or gross disfigurement of the limb of another where malice is a limb endangering state of mind and may be express or implied.

Here, C slapped A so hard, he fell and lost part of his ear. While C did not directly sever the ear, her actions led to the gross disfigurement of A's ear. So even if she did not expressly intend to take a part of A's ear, she exhibited an indifference to the risks associated with attacking A. For this reason, C arguable exhibited implied malice. Therefore C would likely be found guilty of mayhem.

WHETHER C COMMIT CONSPIRACY WHEN SHE AGREED WITH A?

CONSPIRACY (SUPRA)

Here, for the same reasons that A would be found guilty of conspiracy with C, C would also be found guilty. Furthermore, under the Pinkerton doctrine (supra), C would be guilty of the same crimes as A (the one he committed after his agreement with C).

Therefore, C would likely be found guilty of larceny (discussion supra).

WHETHER C COMMIT EMBEZZLEMENT AND/OR LARCENY WHEN SHE TOOK MONEY FROM D'S DRAWER?

Embezzlement (supra)

Larceny (supra)

Here, C was a teller of the bank so she had some level of access to the funds in the drawer. However, C was no longer in her capacity as a bank employee at the time that she took the funds. Furthermore, she was taking from D's drawer, not her own. Taken together, these facts indicated that this was likely not an embezzlement.

However, this taking was accomplished without the consent of the bank. They carried the funds out of the bank. The cash was the property of the bank. And A and C clearly intended to keep the money considering their conspiracy and the fact that A was broke and likely in need of money. Therefore, this was likely a larceny.

2)

ANGELA (A)

WHETHER A COMMIT EMBEZZLEMENT?

Embezzlement is the fraudulent misappropriation of goods of another by an agent or one to which the goods have been entrusted.

Here, A was entrusted with the goods (money) of Bob. The money was fraudulently misappropriated because it was moved using A's bookkeeping access. However, the misappropriation of the money was not actually committed by A. While it could be argued that the funds were taken by an agent of A, the fact that A was unaware that C was taking the funds means that he was likely not her agent. Therefore it seems unlikely that she would be found guilty of embezzlement.

WHETHER A COMMIT MALICIOUS MISCHIEF WHEN SHE GRAFFITIED?

have any malice, neither expressed nor implied, and was not acting with a limb endangering state of mind. Again, she wanted to defend her person. Additionally, this is a minor fleshwound and does not constitute a dismemberment or a gross disfigurement. Mayhem does not apply.

(13) Did C enter into a conspiracy to commit a larceny with A?

Larceny and Conspiracy, supra.

Yes, C and A entered into a conspiracy. They had a meeting of the minds. C actively sees the opportunity presented in which she can larceny money alongside A and actively asks to join A. Their conspiracy is complete upon A's agreement. At ML, the conspiracy is complete when they make the overt act of opening D's cash drawer.

(14) Did C commit a larceny of the money in D's cash drawer?

Larceny & Robbery, supra.

Yes, C committed a larceny. She is trespassing by going into D's drawer, and she is intending to permanently deprive them of the money that is found there. This does not constitute a Robbery as this action was not done by force, threat or fear of violence. The pair simply take the money from the drawer and do not need to take any additional steps to complete this crime.

The only Defense C can use is Self-Defense which protects her from the assault/battery. There are no legal defenses for her conspiracy or larceny crimes.

2)

2)

People v. Angela (A)

(1) Did A embezzle the funds entrusted to her from her job as a bookkeeper for Bob's Auto Body Repair?

Embezzlement is the fraudulent misappropriation of goods of another by one who was entrusted with those goods.

No, A did not embezzle these funds. A does have the requirements of one who was entrusted with these funds. Her job as a book keeper gives her exclusive control over the possession of the money and the nature of the job leaves her vulnerable to an embezzlement claim. However, Carl (C) is the one who committed the larceny of the funds, and therefore A did not commit any actual crimes. The funds were placed in her account by C and can be readily provided back to B, thus absolving her from any potential crime.

(2) Did A commit a Malicious Mischief when she painted graffiti on Bob's (B) shop?

Malicious Mischief is the malicious destruction or damage of property of another.

Yes, A did commit malicious mischief against B's property. She had the requisite malice, which in this instance is a property destroying state of mind. By graffitiing the exterior she is destroying his property. While some graffiti may be washed away, this is not an easily removed substance and this can be constituted as a destruction of property. The malice is present and the property is damaged. There are no defenses afforded to D for this crime.

People v. Bob (B)

(3) Did B commit a burglary when he entered into A's home?

Burglary at common law (CL) is the trespassory, breaking and entering of the dwelling house of another, at night, with the intent to commit a felony therein. At modern law (ML), burglary is the trespassory entering of a building or structure with the intent to commit a felony, or theft-related offense therein.

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

Yes, B did commit a burglary at CL and at ML. The trespassory breaking occurs when B opened the door, the entering is sufficed when he walks through the threshold. This is A's dwelling house, and this act is being committed at night. It can be said that this act is occurring at nighttime because C entered the home in the evening. It would take considerable time for C to break into the home, locate her computer and attempt to hack into it, which in all likelihood means that sufficient time has elapsed for it to be now nighttime. B is also intending to commit a larceny upon entry. While he may believe that \$1000 is owed to him, and that this \$1000 is rightfully his money, this is not the case. This belief is not strong enough to absolve B of the crime of burglary. A never stole the money, so B has no right to recover that money from A, therefore any taking of the money would be a larceny. At ML, this also constitutes a burglary, because B trespassorily entered the home with the intent to commit a theft related offense. Again, he has no real legal right to the \$1000 he is looking for. So any intent he has to retrieve that money is therefore an intent to commit a theft-related offense.

(4) Did B commit malicious mischief when he destroyed A's ceramic cow collection?

malicious mischief, supra.

Yes, B is guilty of malicious mischief, specifically for the destruction of the cow collection. Malice here can be implied, because he is intended to take money from A, but not finding any, he chose to act out and destroy property. He could have easily left the home and not have harmed any property in any way; however, he chose to actively destroy property. There is no defense afforded to B for this destruction. He cannot be found guilty of malicious mischief for the opening of the drawers or tipping of furniture as these items were not destroyed nor damaged by his actions. He is only responsible for the precious, and wonderful, ceramic cow collection.

People v. Carl (C)

(5) Did C commit a larceny by electronically diverting funds from B's business?

Larceny, supra

Yes, C took away and virtually "carried" away these funds with the intent to permanently deprive. He is an expert computer hacker and was tech savvy enough to remove the funds

from B's possession. He had the intent to permanently deprive. He wanted to get back at A for not paying him back and for breaking up with him. While he never gains possession of the funds into his own bank accounts, he does complete the taking and carrying away of funds that is required for a larceny.

(6) Did C commit a burglary of B's business?

Burglary, supra

larceny, supra

C committed a ML burglary, but not a CL burglary. While this act was committed at nighttime, the business is not a dwelling house, nor a property within the curtilage, which disqualifies it from being a burglary at CL. Modernly, he entered this building with the intent to gain access to computers that would allow him to commit a felony, thus he intended to commit a theft-related offense therein. This satisfies the ML burglary requirements.

(7) Did C commit a burglary of A's home?

Burglary, supra

larceny, supra

C committed a ML burglary, but not a CL burglary. The trespassory breaking and entering occurred in the evening, which does not meet the nighttime requirement for a CL burglary. Modernly, C entered into the home to commit a larceny, which satisfies the ML requirements. He intended to move the money from A's account into his own, which is furthering his theft-related offenses.

(8) Did C commit a larceny of A's computer?

larceny, supra

Yes, C physically took and carried away her computer, and there was no expressed intent to return the computer so it can only be implied that he intended to permanently deprive her of the computer. Even if he believed he was owed \$500, that does not allow him to take away the personal property of another. This computer is therefore subject to a larceny.

There are no defenses afforded to Carl.

3)

Larceny (supra)

Here, C does not have permission to take the laptop because A is not home so this act is trespassory. He takes the laptop when he picks it up and carries it away by leaving A's house. The laptop is A's personal property and has intrinsic value so it could be subject to larceny. And C clearly intends to keep it to pay off a debt that he believes A owes him, so he clearly intends to permanently deprive A of it. Therefore, C would likely be found guilty of larceny of the laptop.

3)

ANGELO (A)

WHETHER A COMMIT THE CRIME OF A NEGATIVE ACT BY NOT ATTEMPTING TO SAVE THE HOUSE FROM FLAMES?

Negative acts are the failure to act when one has a legal duty to do so (such as contractual obligations).

Here, A had a duty to act because he was working as a fireman when he received a call to respond to an active fire. As an employee of the fire station he had a contractual obligation to fight the fire. Therefore, A's conscious decision to not put the fire out because it was the house of his ex-wife means that A could likely be found guilty of a negative act.

WHETHER A COMMIT MALICIOUS MISCHIEF OR ARSON BY LETTING THE HOUSE BURN?

Malicious mischief is the malicious destruction or damage to the property of another where malice is defined as a property endangering state of mind and may be express or implied.

Here, the refusal of A to act means that he disregarded a substantial risk that property would be damaged. This is (at a minimum) implied malice. As a result of A's malice, B's house burned to the ground. This means that A would likely be found guilty of malicious mischief.

Arson is the malicious burning of the dwelling house of another where malice is defined as a dwelling house endangering state of mind which may be express or implied.

Here, A was a firefighter and knew that it was very likely the house would burn to the ground if he chose not to act. The fact he decided not to fight the fire because it was his ex-wife's house is arguably express malice. The house did burn all the way to the ground even though there was an opportunity for A to save the structure. Therefore, A would likely be found guilty of arson.

WHETHER A COMMIT A HOMICIDE WHEN CHARLY (C) DIED IN THE HOUSE?

Homicide is the killing of one human being by another human being, which may be lawful or unlawful. A lawful homicide would be perfect self-defense or an accident. An unlawful homicide is murder or manslaughter. Murder is the unlawful killing of another with malice aforethought where malice is a person-endangering state of mind which may be either express or implied. Express malice murder is the express intent to kill.

Here, there is no evidence to suggest that A intended to kill C because he did even know C was inside.

Implied malice murder is the unlawful killing of another with implied malice. It comes in one of three forms: GBI/SBI, wanton willfull, or felony murder rule (FMR). GBI/SBI is the intent to

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inflict great or serious bodily injury and death is the proximate result. Wanton willful is a wanton, willful act done with total and conscious disregard for the value of human life and death is the proximate result. FMR is while in the commission of a felony, death is the proximate result. Modernly, the felony has to be inherently dangerous in the abstract so larceny is excluded.

Here, A did not intend to inflict great or serious bodily injury to C because he did not even know C was inside sleeping, therefore A would not likely be found guilty under this prong. By failing to act to save the house from burning, especially when he didn't know if there was anyone inside, it could be argued that A had engaged in a wanton willful act (his refusal to act) with total and conscious (he made a decision based on the fact that it was his ex-wife's house) disregard for the value of human life (he did not even check to see if anyone was inside). Therefore, A could likely be found guilty under wanton, willful prong of implied malice murder. Furthermore, since A was engaged in arson (supra), and arson is a felony, the fact that C died during this time means that A could likely be found guilty under FMR.

Manslaughter is the unlawful killing of another without malice. It may be either voluntary or involuntary. Voluntary manslaughter is the intentional unlawful killing of another without malice and may fall under one of three prongs: heat of passion, imperfect self defense, and excessive force. Heat of passion requires that the person be acting out of passion, not reason, there is adequate provocation, no cooling off period, and a causal relationship between those elements. There is no evidence to suggest that this was heat of passion manslaughter. Imperfect self defense is the subjective belief that it was necessary to defend oneself when that belief is objectively unreasonable. There is no evidence that this was an imperfect self defense. Excessive force is the use of excessive force where the law would've allowed some force and death is the proximate result. There is no evidence to suggest that this was excessive force.

Involuntary manslaughter is the unintentional, unlawful killing of another without malice. It comes in two forms: criminal negligence and misdemeanor manslaughter. Criminal negligence is while in the commission of a lawful act done without due caution and circumspection and death is the proximate result. There is no evidence that this is a criminally negligent homicide. Misdemeanor manslaughter is while in the commission of a misdemeanor or crime not amounting to a felony and death is the proximate result. There is also no evidence to suggest that this was a misdemeanor manslaughter.

A's crime cannot be mitigated down to manslaughter and there are no defenses, so A would likely be found guilty of one of the aforementioned implied malice murders.

WHETHER A COMMIT BURGLARY WHEN HE WANDERED INTO EDDY'S (E) HOUSE?

Burglary is the trespassory breaking and entering of the dwelling house of another in the nighttime with the intent to commit a felony therein. Modernly, it is the trespassory entering of a structure with the intent to commit a felony or theft related offense therein.

Here, A did not have permission to enter E's house so this entry was trespassory. He opened the door (breaking) and entered E's apartment. E's apartment is a dwelling house even though it's not a house because an apartment is a place where people sleep. It's not clear what time of day A entered the apartment, so if it's not nighttime this could not be a common law burglary. Furthermore, A did not have the intention to commit a felony when he entered E's apartment because A mistakenly believed that it was his own apartment.

Therefore, A's voluntary intoxication and his mistake of fact serve as a defense to his intention upon entering E's apartment. Taking into consideration these "defenses," A would likely not be found guilty of a burglary, even under modern law.

BEA (B)

WHETHER B COMMIT AN ASSAULT WHEN SHE BEAT A WITH THE STATUE?

Assault is an attempted battery where attempt is defined as an act beyond preparation and into the zone of perpetration and or a substantial step towards the commission of the target offense and battery is defined as an unlawful application of force upon another. Modernly, it is intentionally placing another in fear or apprehension of receiving a battery.

Here, B grabs a statue. By grabbing the statue, assuming that A was able to see B grab the statue and raise it, this would be a substantial step towards the commission of a battery since B has armed herself with a weapon to strike A. Therefore this would be a common law assault. Furthermore, if A saw her raise her arm to strike him, this would also be a modern law assault.

WHETHER B COMMIT A BATTERY WHEN SHE BEAT A?

Battery is the unlawful application of force upon another.

Here, B strikes A with a statue. There is no evidence that A consented. Therefore, B applied force upon A without consent and B would likely be found guilty of battery.

WHETHER B COMMIT MALICIOUS MISCHIEF BY USING D'S SATATUE TO BEAT A?

Malicious mischief (supra)

Here, there is no evidence to suggest that the statue was damaged by being used to beat A. So even if it could be shown that B exhibited implied malice by disregarding the possibility that the property could be damaged, the fact that there was presumably no damage means that this B would likely not be found guilty of malicious mischief.

WHETHER B COMMIT A BATTERY WHEN SHE PUSHED A?

Battery (supra)

Here, there is again no evidence that A consented, particularly given that he was intoxicated. BY pushing, B applied force upon A. Therefore B would likely be found guilty of battery for this act.

WHETHER B COMMIT LARCENY WHEN SHE JUMPED IN THE FIRETRUCK?

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

Here, there is no evidence that B had permission to take the truck. She took the truck and carried it away when she started the truck and began driving it away. The truck is the personal property of the fire station so it can be subject to larceny. Furthermore, when she entered the truck she had the intention of hiding it so that A would be fired. Therefore B had the intent to permanently deprive the fire station of the truck. Therefore, it is likely that Be will be found guilty of larceny of the firetruck.

WHETHER B COMMIT MALICIOUS MISCHIEF WHEN SHE CRASHED THE TRUCK?

Malicious mischief (supra).

Here, A intended to hide the truck to get A fired; she did not explicitly intend to damage the truck. However, given that B had never driven before, it can be argued that B had implied malice since there was a substantial risk that the truck would be damaged by her driving since she did not have the skill to drive such a large truck. The truck was ultimately damaged when B crashed the truck. So because B had implied malice and the truck was damaged, B would likely be found guilty of malicious mischief.

EDDY (E)

WHETHER E COMMIT ASSAULT WHEN HE KICKED A TO THE CURB?

Assault (supra)

Here, it can be assumed that E took a substantial step towards the commission a battery because he actually succeeded in kicking A to the curb. Therefore, E may be guilty of a common law assault. Furthermore, it's unclear whether A feared that E would use force upon him, but presumably E was upset with A for being in his apartment so it's likely that E's kicking A to the curb was anticipated by A, therefore E would likely also be guilty of a modern law assault.

WHETHER E COMMIT BATTERY WHEN HE KICKED A TO THE CURB?

Battery (supra).

Here E "kicked" A to the curb. While it's unclear exactly what this means, it can be assumed that E had to lay hands of A in some form to escort A from his apartment, especially considering that A was drunk enough to enter the wrong apartment. Furthermore, there is nothing to suggest that A consented to this touching so it was unlawful. Therefore, E could be guilty of battery.

However, given that A entered his apartment suddenly and without permission, it would be reasonable for E to believe that A was attempting to commit a burglary of his apartment. Therefore, it could be argued that E used reasonable force to defend his habitation from burglary.

END OF EXAM