

Monterey College of Law  
Criminal Law & Procedure – Sec. 2 (Hybrid)

Midterm Examination

Fall 2022

Prof. I Mora

**Instructions:**

Answer Two (2) Essay Questions.

Answer Twenty (20) MBE Questions. Answer in Exemplify.

Total Time Allotted: Three (3) Hours.

Recommended Allocation of Time: Equal Time per Question.

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Hybrid  
Criminal Law & Procedure – Sec.2  
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### QUESTION 1

Matt imports paintings. For years, he has knowingly bought and resold paintings stolen from small museums in Europe and Asia. Matt operates an art gallery in State X in partnership with his two sons Bob and Chris, but he has never told them about his criminal activities. Both of his sons, however, have at one point or another suspected that some of the paintings in the gallery were stolen.

One day, Matt and his two sons picked up a painting sent from Belgium. Matt had arranged to buy a painting recently stolen by Timothy, one of his criminal sources, from a small Belgian museum.

Matt believed that the painting they picked up from Timothy was the stolen one, but he did not share his belief with either of his two sons.

Bob knew about the theft of the painting. Without Matt's knowledge, however, he arranged for Timothy to send Matt a copy of the stolen painting and to retain the stolen painting for themselves to sell later.

Chris regularly sold information about Matt's transactions to law enforcement agencies and continued to participate in the gallery business for the sole purpose of continuing to deal with them.

Are Matt, Bob, and/or Chris guilty of:

- (1) conspiracy to receive stolen property,
- (2) receipt of stolen property *with respect to the copy* of the stolen painting, and/or
- (3) attempt to receive stolen property *with respect to the copy* of the stolen painting?

Please include applicable defenses if any.

\*\*\*\*

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## QUESTION 2

Danny and Vicky were law school colleagues who recently completed their first year of law school and decided to plan a summer road trip in Vicky's new truck. Vicky drove, and Danny was the passenger. While driving in a desolate desert area, Vicky stopped the truck, and offered Danny a psychedelic drug. Danny refused, but Vicky said if Danny wanted to stay in the truck, he would have to join Vicky in using the drug. Afraid that he would be abandoned in scorching temperatures many miles from the nearest town, and that wild desert animals might harm him, Danny ingested the drug.

While under the influence of the drug, Danny killed Vicky in the truck, left the body on the side of the road, and drove Vicky's truck into town. Later, Danny was arrested by the police, who had discovered Vicky's body.

At trial, the arresting officers testified that during the arrest, Danny was hitting himself as he exclaimed that spiders were crawling over his body.

Danny testified that he had no recall of the events between the time he ingested the drug and his arrest. Danny also testified about the events preceding Vicky's death, and his total lack of recall of the killing.

If the jury believes Danny's testimony, can it properly convict Danny of:

- (a) First degree murder?
- (b) Second degree murder?

Discuss.

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**Issues list: Final exam, Criminal Law 128A HYB, 2022-2023 Fall**

**Weight of issues:**

+ (necessary item of discussion)

\* (item of greater weight)

// (item of lesser weight)

///(very minor issue)

**Credit ranges:**

✓✓✓(outstanding; unusually complete & thorough answer; discussed all major & minor issues).

✓✓ (very good; may have missed minor issues or lacked complete discussion of some fact or legal rule, otherwise reasoning clear and cogent, reflected quality understanding of subject matter).

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Ø (unsatisfactory answer or failure to address any major issue).

This question clearly states the issues in each of the calls. Thus, it is important for students to demonstrate an understanding of the rules, and pay close attention to facts that change the outcome. In this question, subtle factual differences change the outcome for each party. Students can organize each call by party or by pointing out where various parties differed from others leading them to different results.

Are Matt, Bob, and/or Chris guilty of:

(1) **conspiracy** to receive stolen property,

(2) **receipt of stolen property** with respect to the copy of the stolen painting, and/or

(3) **attempt** to receive stolen property with respect to the copy of the stolen painting?

Please discuss any applicable defenses within your discussion of each party.

**I. Call 1: Conspiracy (to receive stolen property)**

- a. \*+ Conspiracy is an agreement b/w two or more persons, who have intent to enter into an agreement, and intent to achieve object of the agreement. The object of the agreement must be criminal, or the achievement must be by criminal means. Most jurisdictions require an overt act (in furtherance of the conspiracy), but an act of mere preparation will suffice. However, no act was required under C/L, instead conspiracy occurred the moment the agreement was made.
  - i. + [b/c “overt act in furtherance of conspiracy” concept is prevalent, is followed in most jdx’s, is noted by bar examiners, & was covered in class, students should have as part of rule statement]
- b. // C/L follows a bilateral approach (at least two guilty minds). Whereas, a minority of jurisdictions follow a unilateral approach (only one party has to have genuine criminal intent).
  - i. // [students should make certain to state C/L bilateral approach in rule statement; while, additional mention of unilateral is not necessarily required, but preferable since it was covered in class and part & parcel]
- c. (\*+) Matt: Apply & Conclude.
  - i. **Intent to enter into agreement & intent to achieve unlawful objective of agreement:**  
M did agree w/ T to receive stolen property/ stolen painting since both arranged to

1)

83

**Conspiracy to receive stolen property Matt**

Conspiracy

Conspiracy requires at least two persons agreeing to collaborate in committing the actus rea of an offense. ] ✓✓

Here Matt has knowingly bought and resold paintings that he knows are stolen by another. Matt is conspiring sellers of stolen property. Specifically in this scenario he is conspiring to buy a stolen painting from Timothy, one of his criminal sources.

Receipt of stolen Property

In order for a defendant to be convicted of receiving stolen property the defendant must know they are in receipt of the property of another that was stolen and must have the intent to permanently deprive the other of their personal property. ] ✓✓

Here Matt is receiving stolen property, Matt <sup>thinks</sup> knows he is in receipt of stolen property, and he has the intent to deprive the owner of the property. Matt is taking the known property of another and selling it therefore permanently depriving the rightful owner of their property. Matt would be found guilty of conspiracy to receive stolen property as he has conspired with Timothy for the purchase of a known stolen painting. ] ✓✓

overt act  
in furtherance  
of conspiracy

**Conspiracy to receive stolen property Bob**

Conspiracy, Supra ✓ okay.

- improvement =  
include discussion  
of what was  
"overt act in furth.  
of conspiracy."

Here Bob is conspiring to receive a stolen painting from Timothy. It is the same painting Matt believes he will be obtaining. Bob is conspiring with Timothy to commit the offense of receiving stolen property

good  
that could be your "overt act in further of conspiracy" discussion for Bob.

Receipt of Stolen Property, Supra

aka: B agreeing w/ T to receive the stolen painting and arrangements.

Here Bob is planning to receive stolen property with the intent to sell it for a profit. Because Bob knows the property is stolen and he has the intent to permanently deprive the owner of the property he would be found guilty of conspiracy to receive stolen property.

Conspiracy to receive stolen property Chris

Conspiracy, Supra

okay.

Here Chris regularly sells information about Matt's transactions to law enforcement. He continues to work in the gallery solely to continue reporting activity to law enforcement. Therefore, Matt's actions are not indicative of the required collaboration to commit the actus reus of an offense.

Receipt of Stolen Property, Supra

As above, Chris is reporting the offense to law enforcement. Because that is the sole intent behind Chris's participation in the receipt of stolen paintings he would not be found guilty of conspiracy to receive stolen property.

Receipt of stolen property with respect to the copy of the stolen painting Matt

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Receipt of stolen property, supra — okay.

Here Matt believes he is in receipt of a stolen painting. However, Matt is not in receipt of a stolen property. Matt has received a copy. — good pick up of important fact.

Factual Impossibility

A factual impossibility occurs when it is impossible to commit a crime because there is an unknown fact (to the actor) making the otherwise illegal act an impossibility. The intended offense may be illegal but an intervening event creates a factual impossibility.

Here Matt cannot be guilty of receipt of stolen property as the painting is not stolen even if Matt has the belief the painting is stolen. Due to factual impossibility Matt will not be found guilty of receipt of stolen property as to the copy of the stolen painting.

**Receipt of stolen property with respect to the copy of the stolen painting Bob**

Receipt of stolen property, supra — okay

Here Bob knows he is picking up a copy of the stolen painting as he has conspired with Timothy to later receive the actual stolen painting. } great use of facts

Factual impossibility, supra

Bob will not be found guilty of receipt of stolen property as to the copy of the painting because it is a factual impossibility to be convicted of something that is not a crime.

Here the copy of the stolen painting is not stolen property.

**Receipt of stolen property with respect to the copy of the stolen painting Chris**

Receipt of stolen property, supra — okay

*good*  
Here Chris will not be guilty of receipt of stolen property for the same reasons that Matt and Bob are not guilty. It is a factual impossibility to be found guilty of property that is not actually stolen. Regardless of factual impossibility if the property were stolen Chris is not acting with the intent to permanently deprive another of their personal property. Chris is participating with the intent to inform law enforcement. Chris is not guilty of receipt of stolen property. *→ great use of facts.*

**Attempt to receive stolen property with respect to the copy of the stolen painting**

**Matt**

Attempt

Attempt requires the defendant to intentionally take a substantial act or step towards carrying out the actus reus of the offense.

*good*  
Here Matt believes he is picking up stolen property. He is taking a substantial step towards committing the offense which is going to pick up the stolen property. Factual impossibility is not a defense to attempt. Matt still had the requisite intent (mens rea) therefore he would be found guilty of attempt to receive stolen property. *good*

**Attempt to receive stolen property with respect to the copy of the stolen painting**

**Bob**

Attempt, Supra

Here Bob knows he is not picking up stolen property but rather he is picking up a copy of the actual stolen painting. Bob lacks the guilty mind (mens rea) therefore he would not be found guilty of attempt to receive stolen property as to the stolen painting.

**Attempt to receive stolen property with respect to the copy of the stolen painting  
Chris**

Attempt, Supra <sup>okay.</sup>

Here Chris like Matt believes he is picking up stolen property. If he were not collaborating with law enforcement he would be found guilty as he was taking a substantial step toward committing the offense by going to pick up the property. Because Chris is collaborating with law enforcement he lacks the requires intent and he will not be found guilty of attempt to receive stolen property. <sup>great job.</sup>

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**I. Call 1: Conspiracy (to receive stolen property)**

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- i. + [b/c “overt act in furtherance of conspiracy” concept is prevalent, is followed in most jdx’s, is noted by bar examiners, & was covered in class, students should have as part of rule statement]

- b. // C/L follows a bilateral approach (at least two guilty minds). Whereas, a minority of jurisdictions follow a unilateral approach (only one party has to have genuine criminal intent).

- i. // [students should make certain to state C/L bilateral approach in rule statement; while, additional mention of unilateral is not necessarily required, but preferable since it was covered in class and part & parcel]
- c. (\*+) Matt: Apply & Conclude.

- i. **Intent to enter into agreement & intent to achieve unlawful objective of agreement:** M did agree w/ T to receive stolen property/ stolen painting since both arranged to buy/ sell recently stolen painting, and T is one of M's criminal sources (+). *Arguably*, T did not agree to achieve object of agreement since he had a side deal w/ B that he would not give M actual stolen painting but a copy. However, it appears that M and T did *initially* agree to receipt of stolen painting, and then B talked to T, so M & T agreed first to unlawful objective and agreement occurred (intent to receive stolen property). (//)
- ii. **Overt act:** they all picked up painting sent from Belgium; Matt picked up painting he believed was stolen property. (+)
- iii. **Bilateral v. Unilateral jdx;** in a unilateral jdx. this could be sufficient *even if* T knew the painting wasn't stolen to begin with and always planned on giving M a copy. (//)
- iv. \*Thus, M is guilty of conspiracy w/ T.

- d. (\*+) Bob: Apply & Conclude.

- i. **Intent to enter into agreement & intent to achieve unlawful objective of agreement:** B agreed w/ T to receive stolen property at later date; so, he agreed w/ T to commit unlawful act by selling painting later.
- ii. **Overt act:** Could be same as M above when they all picked up painting (or could be arranging w/ T to keep stolen painting for themselves to sell later).
- iii. \*Thus, B is guilty of conspiracy w/ T.
  - 1. *Note:* Two of the parties (M & B) had similar facts for conspiracy so they could have been combined.

- e. (\*+) Chris: Apply & Conclude.

- i. **Intent to enter into agreement & intent to achieve unlawful objective of agreement:** C did not agree w/ anyone to receive stolen property. Instead, he was working w/ law enforcement, selling info, and that was the only reason he continued to participate in the art gallery business; agreeing to work w/ police, but not w/ the intent to achieve unlawful objective.
- ii. \*Thus, C is not guilty of conspiracy.

- f. /// Note: For all of them, existence of partnership alone to operate art gallery does not mean they all agreed to commit an unlawful objective b/c operating a gallery alone is not unlawful.

- g. // Overall conclusion: None of them are guilty for conspiracy with each other, but Matt and Bob are guilty for conspiracy with T (based on their own individual agreements).

## II. Call 2: Receipt of Stolen Property (w/ respect to the copy of the stolen painting)

- a. \*+Receipt of stolen property: (1) D receives possession of stolen personal property (2) w/ knowledge that personal property is stolen, and (3) w/ the intent to

permanently deprive the true owner. Receipt of stolen property is specific intent crime. (\*) D must receive *stolen* property. Meaning, the property must have "stolen" status at the time it is received by D.

b. (\*+) Matt: Apply & Conclude.

- i. While M did have the intent to permanently deprive the owner of the painting, the painting he received was not stolen it was just copy.
- ii. Thus, M is not guilty of receipt of stolen property.

c. (\*+) Bob: Apply & Conclude.

- i. B arranged w/ T to send M a copy, so he too could not be guilty of "receipt" of stolen property, (b/c they only received a copy when they picked it up). However, once B does receive the actual stolen painting, he then can be guilty of receipt of stolen property.
- ii. Thus, B is not guiltily of receipt of stolen property, (until he receives actual stolen painting from T).

d. (\*+) Chris: Apply & Conclude.

- i. Like above parties, painting was copy; and C working w/ police, so had no intent to permanently deprive.
- ii. Thus, C not guilty of receipt of stolen property.

e. *Note*: All parties have same analysis for receipt of stolen goods, so could all be analyzed together (to save time).

f. // Overall conclusion: None of them are guilty of receipt of stolen property; \*students should have made sure to notice that the call stated, receipt of stolen property *w/ respect to the copy*.

### III. Call 3: Attempt (to receive stolen property *w/ respect to the copy* of the stolen painting)

a. **Attempt**: overt act beyond mere preparation with specific intent to complete target crime. Substantial step towards completion of target crime (MPC); or act dangerously close to successful completion of crime (C/L). [students do not need to specify sources of MPC or C/L, just substance of rule].

b. (\*+) Matt: Apply & Conclude.

- i. + **Attempt**: M had specific intent to receive stolen property (doing it for years & had criminal sources); substantial step by picking up painting.
  - 1. Thus, guilty of attempt.
- ii. // Mistake of fact: M was mistaken as to fact that painting was a copy, however, he still intended to steal actual copy, so the fact that it was a copy, doesn't negate his intent to "attempt" to steal actual copy; i.e., if facts were as M believed them to be, it would have been a crime. // Thus, MF not a defense to attempt.

c. (\*+) Bob: Apply & Conclude:

- i. + **Attempt**: Since B arranged for a *copy* and knew it wasn't the original stolen painting, he did not intend to receive stolen property *w/ respect to the copy* of the stolen painting.

1. Thus, not guilty of attempt to receive stolen property w/ respect to copy. (/// although, it is possible he could still be liable for the actual copy, since he did intend to steal that, and took a step by having T hold onto it, but he would not be guilty for the copy itself for attempt).
- ii. /// MF: B knew which painting was stolen and which was copy, so no mistake of fact.

d. (\*+) Chris: Apply & Conclude:

- ✓✓✓ [
- i. +Attempt: B/c C was working w/ the police, he did not intend to receive stolen property/ target crime (b/c his intent was to report it to law enforcement).
    1. Thus, not guilty of attempt. (/// on the other hand, C did go along w/ everything and actually did attempt to receive the stolen painting, but no intent to permanently deprive owner since working with police or likely law enforcement would grant him immunity for providing information).

e. // +Mistake of Fact: If facts were as D believed them to be, he would not be committing a crime. In order for mistake of fact to be used as a defense, the mistake of fact must show that D lacked/ did not have the requisite intent/ mens rea for "attempt" (attempted receipt of stolen property). /// Reasonable MF- defense to SI crimes. Unreasonable MF- defense to SI crimes.

f. // +Impossibility:

- ✓✓✓ [
- i. // Factual impossibility- target crime is impossible to complete, b/c of *factual condition* unknown to D. FI is not a defense. Here, since copy was not actual painting it was a factual impossibility to attempt to receive stolen property, but it is not a valid defense for attempt. (M might try to raise factual impossibility as a defense to attempt, but will fail).
  - ii. /// Legal impossibility- situation where target crime is impossible to complete, b/c of non-existence of law making act a crime. LI is a defense to attempt, albeit rare. Here, factual impossibility, see above.

- g. + Note: students should have addressed at least one; either mistake of fact or factual impossibility, not both.
- h. // Overall conclusion: Guilty of attempt- M. Not guilty of attempt- B and C. (Alternatively, students could argue C was guilty of attempt to receive stolen property b/c he went through w/ everything, but working w/ police and likely lacked intent to permanently deprive, or would receive immunity from law enforcement).

2)

**State v Danny (D)**

**Homicide**

Homicide is the killing of one human being by another human being. ] ✓

Danny (D) a human being killed Vicky (V) another human being.

Therefore, there was a homicide.

Causation

The defendant must be both actual and proximate cause of victims death. ✓

**Actual cause**

But for defendants action victim would not have died.

But for D act of killing V in the <sup>truck</sup> V would not have died.

Therefore D is the actual cause of V death.

**Proximate cause**

It was foreseeable that victim would die due to defendants actions.

It was foreseeable that V would die if D killed her and left her body on the side of the road.

Therefore, D was the proximate cause of V death.

Therefore, there was causation.

## Murder

Murder is the unlawful killing of a human being with malice aforethought which can be seen through:

- ✓  
good
- 1) Intent to Kill
  - 2) Intent to cause great bodily harm
  - 3) Reckless indifference to human life, or
  - 4) Felony murder rule which requires a defendant to be guilty of an enumerated felony such as Battery, Assault, Rape, Robber, or Kidnapping.

Here, the state will argue that D intended to kill V when he attacked and killed her in the truck. It would be reasonable to infer he attached her because the facts state she was killed by D in the truck and a person under the circumstances would not die without some type of force brought by another. Thus, \_\_\_\_\_ . } good

good! [ Here, D will counter he did not intend to kill V because he was under the influence of a drug which caused him to not recall the events between the time he ingested the drug and his last arrest and did not recall the killing. Here, the facts state that the jury believed ] good!  
Danny so it would be reasonable to believe he truly believed he did not have intent to kill V when he killed her. Therefore specific intent killing would not be applicable.

2) Here, the state will argue that D killed V with intent to cause great bodily <sup>okay.</sup> because he died inside of the truck as a result of D actions and it would be reasonable to infer that it was a violent killing or at least one that V would not have consented to. Here, D will counter he did not intend to cause great bodily harm to V because he was under the

influence of a drug which caused him to not recall the events between the time he ingested the drug and his last arrest and did not recall the killing. Here, the facts state that the jury believed Danny's accounts of the situation, so it would be reasonable to believe D believed he did not have intent to cause great bodily harm to V when he killed her. Therefore, specific intent to cause great bodily harm would not be applicable.

3) Here, the state will argue when D killed V he acted with reckless indifference to human life because a reasonable person would not have killed another person or would have acted in a manner that they knew or should have known would cause someone death. Here, Danny again will argue he was under the influence of the drugs and did not recall the events. He will argue that he would not have killed V but for the drug use. Therefore, reckless indifferent to human life would not be applicable.

4) Here, there are not facts to imply V died during the commission of any inherently dangerous felony to amount to malice aforethought connects through the felony murder rule. The state may argue she may have died during the commission of a battery; however, as stated below, the mental state may be negated due to voluntary intoxication being a possible defense. *what about involuntary intox.?* An battery requires facts showing that V was unlawfully or unwarranted intentionally touched and harmed by another with intent to commit the unlawful act. Here, the intent element may not be met as D will counter his intoxication negated his intent as evidenced by his lack of recall of the events after he took the drugs and did not recall killing V. Therefore, Felony Murder Rule may not be applicable.

### **First Degree Murder**

First Degree Murder requires that the defendant act with premeditation and deliberation } *good*  
or that they be liable under felony murder rule.

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Here the state will argue that D acted with premeditation and deliberation when he killed V; however, D will counter he did not as he did not recall the events after he took the drugs and did not recall the killing. Therefore, First Degree murder may not be applicable.

## Second Degree Murder

Second Degree Murder is a murder that is not first degree murder.

Here, if the jury does not find the acts of D amounted to first degree murder they may find that D actions amount to second degree murder. ] great!

Therefore, D may be liable under second degree murder. ✓ (unless a defense applies)

D will argue there were applicable defenses with should be applied to negate his state of mind and mitigate his murder charge to a lesser offense.

## Defenses

### Intoxication

Voluntary intoxication ] ✓

Voluntarily taking intoxicating substances negates specific intent. ] great! ✓

Here, the facts state that while on their road trip, V stopped the truck and offered D a psychedelic drug.

good | The state will argue D took the drug voluntarily and thus he would be liable for second degree murder.

good use of facts

Here, D will argue he felt compelled to take it as he was afraid that he would be abandoned in the scorching temperatures many miles from the nearest town if he did not take it.

The state will counter that a reasonable person in D shoes would not have felt compelled to take the psychedelic drug because they would fear the side effects of taking such a drug.

Therefore, voluntary intoxication may be a defense.

interesting:  
fear of side effects vs.  
fear of environment.

*Involuntary Intoxication* ]✓

could improve rule statement

— Taking substances unknowingly or without free will is a possible defense.

Here, D will argue he took the psychedelic drug unknowingly or without free will because he did not want to be abandoned in the desert.

The state will counter that it was not against his will because V told him if you want to stay in the truck you would have to join me in using the drug. A reasonable person would not have felt compelled to take it because they would believe both would now be stranded in the desert as both would have secondary effects due to the drug use.

Therefore, involuntary intoxication may not be a defense.

**Insanity** ]✓

*M'Naughten test*

Due

Do to defendant's mental illness, he did not understand the nature and quality of his actions meaning he did not know what he was doing was wrong.

Here, D will argue that when he killed V the drug he consumed impacted his mental capacity and resulted in mental illness because he not understand the nature and quality of

his action as he did not recall the killing and he did not know what he was doing was wrong because when he was arrested by the police he was observed hitting himself as he exclaimed that spiders were crawling over his body. Therefore, M'Naughten test was met.

*Irresistible Impulse test*

DUE  
Do to defendant's mental illness he was not able to control his conduct.

Here, D will argue that when he killed V the drug he consumed impacted his mental capacity and caused him to suffer mental illness and the mental illness resulted in him not being able to control his conduct as he did not recall the killing and when he was arrested by the police he was observed hitting himself as he exclaimed that spiders were crawling over his body. Therefore Irresistible Impulse Test was met.

*Durham test*

Defendant's conduct was a product of defendant's mental illness.

Here, D will argue but for his drug consumption and subsequent mental illness he would not have killed V and would have been able to recall the events surrounding the killing and when he was arrested by the police he was observed hitting himself as he exclaimed that spiders were crawling over his body. Therefore Durham test was met.

*ALI/MPC test*

Defendant lacks the capacity to appreciate the wrongfulness of his conduct or conform his conduct.

Here, D will argue that he lacked the mental capacity to appreciate what he was doing when he killed V due to the drug he consumed impacted his mental capacity. D will argue he could not reasonably understand his conduct was wrong or conform his conduct

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because he did not recall the killing and when he was arrested by the police<sup>e</sup> he was observed hitting himself as he exclaimed that spiders were crawling over his body. Therefore, ALI test was met.

Therefore, D may be able to successfully use the Insanity Defense.

### **Duress**

Duress is not a defense to murder. ] ✓

Here the state will argue that duress is not a defense to murder.

Therefore, the defense may not be used.

### **Voluntary Manslaughter**

Killing committed during heat of passion or through imperfect self defense.

Here, there are no facts to indicate that V died during the commission of a heat of passion or imperfect self defense type of incident.

Therefore voluntary manslaughter would not be applicable.

### **Involuntary manslaughter**

Death caused during the commission of criminal negligence or misdemeanor manslaughter.

Here, D will argue that V died as a result of his drug use and he had not intent to kill her.

Here, the state will argue that although D reports not remembering killing V she died as a result of his actions and D voluntarily took the drug.

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D owed V the duty to not cause her harm as she could not have reasonably consented to such action plus she too was under the influence of pschedelic drugs. As a result, the state will argue that D actions amount to criminal negligence as he was grossly negligent in taking the drug and subsequently killing V.

Therefore, D may be criminally liable under involuntary manslaughter.

As a result (good = pertinent fact if the jury believes Danny's testimony) the following would be the result:

(a) First Degree Murder- Not liable.

(b) Second Degree Murder- Mitigated due to insanity defense (lack of mental state) and liable under involuntary manslaughter.

remember, involuntary intoxication (or insanity) is a complete defense

**END OF EXAM**

Great job!

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1/2 (missed issues & organization lacking, answer is cursory, deficient in significant areas, reflected minimal understanding).

∅ (unsatisfactory answer or failure to address any major issue).

This question clearly requires a discussion of murder. Students should approach this issue by defining murder, and then identifying the four ways to establish malice. After completing that analysis, students should analyze the requirements for first- and second-degree murder. It is crucial to analyze any applicable defenses. In this question, there are specific facts that lead to a discussion of the defenses, which can affect the entire outcome of whether Danny is guilty of murder or not. On a question such as this, the conclusion students ultimately arrive at, is not as important as clearly stating and adequately supporting their particular conclusion(s). Since this question raises issues that can logically be argued two ways, the key is for students to argue both sides of the issue, and explain why they thought one side was the stronger argument.

If the jury believes Danny's testimony, can it properly convict Danny of:

**(a) First degree murder?**

**(b) Second degree murder?**

Discuss.

I. **/// Homicide:** At its most basic level, homicide is killing another person; taking of another person's life. (///: good way for students to start their homicide discussion, but can start with common law murder as well). Here, because Danny committed an act that resulted in V's death, he has committed a homicide. (However, his liability for first- or second-degree murder, depends on jury's determination of his mental state at time homicide occurred).

II. **/// Causation:** (actual & proximate). Here, means & manner of V's death is unknown, but b/c D directly caused V's death, there was actual & proximate cause.

III. **(\*+) Common Law Murder:** unlawful killing of human being w/ malice aforethought. Intent to kill, intent to inflict GBI, reckless indifference to unjustifiably

See  
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high risk to human life/ depraved heart (conscious disregard), & intent to commit a felony.

a. \*+Apply & conclude.

b. (Any reasonable conclusion): Here, since D was under the influence of a hallucinogenic drug, was so intoxicated he was unable to form intent to kill, intent to commit GBI, or have conscious disregard. Thus, D not liable for C/L murder.

**Alternative:** Here, although the precise means of death is unknown, b/c D directly caused V's death, he likely had the intent to kill V since he intentionally used force to kill V. Thus, in the absence of legal justification or mitigating factors, D is guilty of C/L murder.

IV. **(\*) First degree murder:** Premeditation + deliberation\*; or enumerated felony which statute regards as first-degree felony murder (///).

a. \*+Apply & conclude.

b. (Any reasonable conclusion): +Here, D was so intoxicated he was unable to premeditate or deliberate. Thus, not guilty of first-degree murder. **Or**, //Here, the fact that D removed V from the truck and left the body on the side of the road might suggest evidence of planning on his part. +However, if jury believes D's testimony about events preceding V's death & his total lack of recall of the killing, it cannot find he premeditated or reflected on V's murder. Thus, D is not guilty of first-degree murder. (\*students should note that call says assuming jury believed D's testimony).

V. **(\*) Second degree murder:** All other murders—not determined, to be 1<sup>st</sup> degree murder, voluntary manslaughterer, or involuntary manslaughter—are second degree murder; or C/L murder is second degree murder; or C/L murder is a “residual category” for unjustified killings not of the first degree. (Note: students should choose one version and stick w/ it, they will all lead to same analysis)

a. \*+Apply & conclude.

b. Here, D did kill V, so there was a homicide. If the killing wasn't justified, and the intoxication defense is ineffective, D will be guilty of second-degree murder. Thus, guilty of second-degree murder, unless a defense is effective. **Or**, Here, second degree murder is a killing done w/o premeditation and deliberation. If the killing is found to be unjustified, and the defense of intoxication is found not to apply, D will be guilty of second-degree murder. (Note: students should notice that since premeditation and deliberation is likely not found, and since manslaughter is not on the table, D will be guilty of second degree/ C/L murder unless a defense applies).

VI. **(+) Defenses to Murder Charge**

a. Intoxication: as a defense to both first degree murder and second-degree murder, D will raise the defenses of voluntary & involuntary intoxication. (Voluntary intoxication as defense to SI crime of first degree murder; and involuntary intoxication as defense to malice crime of second degree/ common law murder).

b. // **Voluntary Intoxication:** Voluntary intoxication is *not* a defense to common law murder, but it is a defense against specific intent crimes (like first degree murder), would mitigate first degree to second degree. Aka: it is generally held

that voluntary intoxication *will not* mitigate second degree/ common law murder down to voluntary manslaughter.

- ✓ ✓ ✓ [ i. // Apply & conclude.
- ii. // Here, D may offer evidence that he voluntarily ingested drug to show he lacked premeditation & deliberation. Assuming jury believes D's version, would succeed and be found not guilty of first degree murder. However, b/c second degree/ C/L murder only requires malice aforethought (not SI crime), he would still be guilty of second degree/ C/L murder, unless other defense (like involuntary intoxication, see below) applies.

✓ [ c. **(\*+) Involuntary Intoxication:** complete defense to all crimes (whether specific, general, malice, recklessness, negligence, or even strict liability). Involuntary intoxication only results from taking intoxicating substance (1) under duress imposed by another, or (2) without knowing of its intoxicating effect (tricked into taking substance w/o knowing of intoxicating nature), or (3) pursuant to medical advice w/o knowing of its intoxicating effect.

- i. **\*+Apply & conclude.**
- ii. + Here, D refused to take drug, which may indicate he was aware of its intoxicating nature. However, D will argue he was forced to take drug under duress b/c V threatened to kick him out of truck in desolate area, scorching heat, w/ wild animals, miles from nearest town. Involuntary intoxication may provide a defense to c/l / second degree murder. Thus, involuntary intoxication is likely an effective defense against c/l / second degree murder.

1/2 d. **(\*+) Insanity/ responsibility & criminal capacity:** Involuntary intoxication may be treated as a mental illness, in which case a D is entitled to an acquittal if the test of insanity is met; aka: some jurisdictions treat involuntary intoxication as a mental illness, meaning, if a D has been involuntarily intoxicated, then they are entitled to a complete acquittal if they meet insanity test that jdx. has set forth/ adopted. (Note: students should notice that the facts are pushing them to discuss how serious D's break from reality was, and how intoxicated or insane he might have been at the time of the crime).

✓ ✓ ✓ [ i. + **M'Naghten Rule (cognitive test):** D entitled to acquittal if proof establishes that b/c disease of the mind D lacked capacity to understand wrongfulness of his acts *or* D could not appreciate nature & quality of his acts.

✓ ✓ ✓ [ 1. Apply & conclude. Here, D could argue didn't know actions were wrong since he didn't know what he was doing, thus, should not be found guilty by reason of insanity.

✓ ✓ ✓ [ ii. + **Irresistible Impulse Test (volitional test):** D entitled to acquittal if proof establishes that b/c of disease of mind D lacked self-control & free will and could not conform his actions to the requirements of the law.

✓ ✓ ✓ [ 1. Apply & conclude. Here, D could argue that couldn't control his actions, couldn't control impulse to kill V.

✓ ✓ ✓ [ iii. + **Durham Test (causation test):** D entitled to acquittal if proof establishes that D's conduct was a product of the mental disease or defect (but for test).

✓✓✓ [ 1. Apply & conclude. Here, D could argue that conduct was product of being on the drug; would not have attacked V "but for" his intoxicated mental state.

✓✓✓ [ iv. + **American Law Institute/ MPC test (blend of M'Naghten & Irresistible impulse test):** D entitled to acquittal if proof establishes that b/c of disease of mind D lacked capacity to appreciate criminality of his actions or lacked capacity to conform his conduct to requirements of law.

✓✓✓ [ 1. Apply & conclude. Here, if D was unable to conform conduct to law or was unable to appreciate wrongfulness of act committed as a result of his involuntary intoxication, would be acquitted of murder.

v. *Note:* Preferable that students analyze under each test, however, credit will be given for reasonable discussion of insanity, provided student demonstrates understanding of insanity principles.

✓✓✓ [ e. **///Duress:** Defenses of necessity/ duress are not available to a person who commits homicide.

i. **///** (involves threat from another person): Not a defense against homicide. D must reasonably believe that another would inflict death or GBI to him, a member of his family, or third person if he did not perform criminal act requested.

f. **///Necessity:** Defenses of necessity/ duress are not available to a person who commits homicide.

i. **///** (involves threat from a natural or physical force): Not a defense against homicide. If as a result of natural or physical forces, D reasonably believed his criminal conduct was necessary to avoid greater harm (than harm caused by his criminal conduct), and there was no reasonable alternative.

not necessary to pass exam;  
very minor issue

VII. **///Overall Conclusion:** B/c jury believed D's testimony, D would be acquitted of both first degree and second-degree murder on an involuntary intoxication theory or applicable insanity test.