

Monterey College of Law - Hybrid

Criminal Law & Procedure

Fall 2023

Prof. C. White

Instructions:

Answer two (2) Essay Questions.

Answer 24 MBE Questions

Total Time Allotted: Three (3) Hours

Hybrid
Criminal Law – Sec. 3
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Question 1

Bonnie and Clyde have a daughter named Daisy who is 11 years old. One day, Daisy comes running into the house crying and tells Bonnie and Clyde that she had been playing at the neighborhood park when a tall man wearing a red hat had grabbed her arm and tried to pull her into his dark blue van.

Bonnie and Clyde call the police and Detective Smith responds to Bonnie and Clyde's house. Detective Smith interviews Daisy and then tells Bonnie and Clyde that there had been several complaints about a man matching this description trying to grab neighborhood kids. Detective Smith then says to Bonnie and Clyde, "We are understaffed and have no leads, I wish someone would help us out with this guy. It would make the neighborhood a whole lot safer."

A few days later, when Clyde is driving Daisy home from school, Daisy tells Clyde that she is pretty sure she saw the man who tried to grab her when she and Clyde drove past the park. Clyde arrives home and tells Bonnie who has just been dropped off after having some happy hour drinks with friends. While Clyde is calling the police, Bonnie grabs a handgun and loads it. Bonnie then tells Clyde that she is going to "take care" of the situation and that she is not going to wait for the police because she thinks they will take too long.

Clyde drives Bonnie to the park where they see a man who is 5'11" and wearing an orange hat park a dark green van near the soccer fields and run over to a group of young girls. Bonnie wonders out loud if "that is the guy" and Clyde responds, "I thought you said you were going to take care of it, think of Daisy!" Bonnie then exits the vehicle, runs over to the man, and yells "stay away from those kids!" as she fires the gun at him killing him instantly. Bonnie and Clyde later learn that the man was a soccer coach who was running late for practice.

What crimes is Bonnie guilty of, if any (do not discuss conspiracy).

What defenses does Bonnie have, if any?

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Question 2

Alex and Barry are career criminals who have committed several armed robberies together. During a night of heavy drinking, the two agree that they should pull off one last job before they retire from their life of crime. They decide to rob a local liquor store which always has a lot of cash on hand right before closing.

Alex procures two ski masks and a gun. Unbeknownst to Alex, Barry decides to steal a getaway car from his neighbor because the neighbor always leaves his keys under the floor mat. Barry picks Alex up and they start driving toward the liquor store when Alex starts to sober up and rethink his participation in the robbery.

Alex tells Barry that he doesn't want to go through with the robbery gets out of the car at a stoplight. As Alex is exiting the car, he tells Barry to remember to put on his ski mask before he robs the store, so he does not get caught. Alex then tosses Barry the gun.

On his walk home, Alex calls the local police department's after hours "tip line" where citizens can make anonymous reports. The outgoing message on the "tip line" tells callers that the messages are not checked every day and that for urgent matters they should call 911. Alex leaves a message saying that he has information that a "local" liquor store is going to be robbed. Meanwhile, as Barry is walking into the liquor store he trips as he is pulling his ski mask on. As Barry falls to the ground his gun accidentally falls out and scares everyone. As Barry runs out he yells, "I'm sorry, I wasn't going to do anything!" The clerk quickly calls 911 while Barry runs out of the store empty handed. Barry and Alex are arrested the next morning.

1. What crimes can Alex and Barry be charged with, if any?
2. What defenses do Alex and Barry have, if any?
3. How should a jury decide the charges against Alex and Barry?

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Answer Outline/Key-Q1

1. Bonnie's Crimes:

- *First Degree Murder: willful, deliberate, premeditated*
 - *Brought a loaded gun*
 - *Said she was going to "take care of it"*
 - *Sat in car for several minutes.*
 - *She shoots immediately. Did not ask V any questions or wait for him to respond or react*
- *Second Degree Murder: express malice*
 - *Murder Second as opposed to Murder First because Bonnie paused when she got to the park.*
- *Manslaughter:*
 - *Imperfect defense of another:*
 - *Man roughly matched description given by Daisy*
 - *Was around a group of kids*
 - *Were kids entitled to use self defense*
 - *Was there an "immediate threat" to the kids?*
 - *Was deadly force necessary?*
 - *Heat of passion:*
 - *Daisy was V of attempted kidnapping*
 - *Clyde tells her to think of Daisy*
 - *Was Bonnie's presented with a situation which would cause a reasonable person to be so emotionally inflamed that he/she would not be able to reason clearly?*

- *Was there time to reflect?*
 - *Analysis on what was the triggering event?*
 - *Daisy being victim of attempted kidnapping? Highly inflammatory...*
 - *Clyde goading her into acting? Bonnie is reflecting before shooting BUT there is an argument that Clyde inflamed her passions by telling her to “think of Daisy!”*
 - *Seeing man chase kids?*
 - *Combination of these events?*
 - *Would this be sufficient to cause reasonable person to lose all sense of reflection?*
 - *Was there time to cool off? Will depend on what triggering event(s) is/are discussed.*

2. Bonnie's Defenses:

- *Mistake of law:*
 - *Detective Smith told her that the P.D. was understaffed and had no leads and that if someone “took care” of this problem it would make the neighborhood a whole lot safer.*
 - *Was Detective Smith giving legal advice or just talking informally?*
 - *Did he tell Bonnie that she should shoot the man or was he asking for more community involvement and awareness?*
- *Voluntary Intoxication as a defense to first degree murder—willful, deliberate, premeditated.*
 - *Daisy got home from “happy hour”*
 - *Daisy had to be dropped off by friends—too drunk to drive herself?*
- *Perfect defense of others:*
 - *Cops tell Bonnie that there are other attempted victims and they need help.*
 - *Daisy says that she thought V was the man who tried to kidnap her.*
 - *Bonnie sees V talking to kids and he fits the description of suspect.*

- o She tells him to get away from the kids.

Answer Key/Outline:Q2

Alex and Barry's Crimes:

- *Conspiracy (Barry and Alex): Intentionally entering agreement with intent that target crime be accomplished and one member does overt act.*
 - o Agreement
 - o Overt act: stealing car (Barry), procuring ski mask and gun (Alex)
- *Attempted Robbery (Barry): substantial step with intent to commit target crime*
 - o Entering store while reaching for gun
 - o Intent can be inferred from surrounding circumstances: career robber, has gun, mask and plan to rob, entering store, pulling mask on...etc
- *Attempted Robbery (Alex):*
 - o Pinkerton doctrine: Done in furtherance? Was robbery reasonably foreseeable?
 - o Accomplice liability: provide advice, counsel, support, etc. with intent that crime be committed. Did Alex aid and abet Barry when he reminded him to put on his mask and gave him the gun?
- *Car theft/larceny (Barry)*
 - o Alex's liability for the car theft?
 - o Pinkerton doctrine: Done in furtherance? Was robbery reasonably foreseeable?

Defenses:

- *Voluntary intoxication for both: voluntary intoxication can negate specific intent crimes; we are told they are heavily intoxicated*
- *Withdrawal from the conspiracy (Alex): renounce participation in conspiracy to other parties involved and thwart conspiracy by notifying authorities*
 - o Did Alex re-engage in the conspiracy by providing Barry with the gun and some advice?
 - o Was leaving a message on an after-hours tip line a sufficient attempt at thwarting the conspiracy?
- *Abandonment of attempted robbery by Barry?*
 - o Did fleeing the scene after tripping and dropping his gun constitute an abandonment of the attempt?
 - Was abandonment done voluntarily?
 - Did abandonment occur before substantial step?

How should jury decide (issues):

- *Were Barry and Alex too drunk to enter into a conspiracy? Was Barry too intoxicated to attempt robbery?*

- *Withdrawal from conspiracy by Alex? Alex provides assistance after communicating intent to withdraw—gives Barry the gun and some advice. Was calling enough? Was call enough to notify police of the crime?*
- *Aiding and abetting by Alex even if he withdrew from the conspiracy.*

1)

Crimes Bonnie can be guilty of:

In order to be guilty of a crime, the prosecution must prove the following elements:

there was a voluntary act (actus reas);

there was an intent to commit the voluntary act (mens rea);

there was a concurrence of the voluntary act and intent to commit the act (both actus rea and mens rea happening at the same time);

that the crime committed by the defendant was the causation (actual and proximate cause).

Homicide

Homicide is the killing of another human being. Homicide can be lawful or unlawful.

In this case, there was a killing of another human being. Bonnie killed the soccer coach.

Common Law Murder

Murder is the unlawful killing of another human being with malice aforethought and is not justified. In this case, Bonnie unlawfully killed the soccer coach with malice aforethought thinking that the soccer coach was the man that tried to kidnap Daisy. There was an actus reas which is when Bonnie voluntarily fired a gun at the soccer coach. Bonnie committed those actions willfully because nobody pressured her to take these actions. Bonnie grabbed the gun and loaded it herself. There was also a mens rea present which is her knowingly wanting to "take care" of the situation. This is expressed malice because she stated outloud her intent to take action against the soccer coach who looked like the man who tried to kidnap Daisy. There was concurrence: Bonnie knew

what she wanted to do while committing the act. Bonnie knew that she wanted to shoot the man who fit the description of the kidnapper.

Even though she shoot the wrong guy, her intent to kill is evident in this case. Although she mistook the soccer coach with the Neighbourhood kidnapper, she is still likely to still be charged with murder because she intended to kill someone.

California 1st degree Murder

First degree murder is a killing committed with deliberation and premeditation and requires a specific intent to kill with expressed malice. In this case, there is evidence of clear deliberation and premeditation to kill the potential kidnapper. Bonnie grabbed a handgun, loaded the handgun, stated that she will "take care" of the situation and not wait for the police, went with Clyde to the park, runs to the man, and shoots the soccer coach. These facts demonstrate clear deliberation and premeditation because they gave the defendant time to think about the act she committed before shooting the gun. Furthermore, Bonnie had a specific intent to kill the neighbourhood kidnapper although the person she killed was not him. Her expressed intent was to kill the kidnapper not the soccer coach. This demonstrates that the specific intent to kill is not satisfied.

Therefore Bonnie will likely not be guilty of 1st degree murder.

2nd degree Murder

Second degree murder is a killing done without premeditation and deliberation. It requires that the defendant act with malice or implied malice, meaning that they had an intent to kill, intent to inflict great bodily harm, a reckless indifference to human life or intent to commit a felony. In this case, Bonnie intended to kill for the reasons discussed supra. She clearly took action by grabbing a gun, loading it, and going to the park to "take care" of the situation demonstrated intent to kill. Although Bonnie killed someone, it was not Bonnie's intended target. Bonnie did not deliberate the killing of the soccer coach rather Bonnie deliberated the killing of the kidnapper. She took action that a

reasonable prudent person would not have taken otherwise.

Since there was an expressed intent to kill with malice, Bonnie will likely be guilty of 2nd degree murder.

Voluntary manslaughter

Voluntary manslaughter would be murder if not for the existence of adequate provocation, imperfect self-defence, or diminished capacity. Provocation would be adequate if the following is satisfied:

the defendant was aroused suddenly causing intense emotion in the mind of a reasonable prudent person causing him to lose self-control;

the defendant was actually provoked;

there was enough time to cool down;

the defendant did not cool down between the provocation and killing period.

In this case Bonnie got angry because of the idea that the kidnapper was in her community. This idea suddenly aroused her causing her to take action to kill someone. The defendant was provoked by this idea. It can be argued that Bonnie was provoked by Clyde since he told her about the kidnapper and reminded her that she wanted to "take care of it" and to think about "Daisy". This reminder provoked her to further her plan to kill the kidnapper. There was enough time to cool down during the drive to the park, although Bonnie did not cool down between the provocation and killing period.

Therefore, Bonnie is very likely to be guilty of Voluntary manslaughter.

Involuntary manslaughter

Involuntary manslaughter is the unintentional killing of another human being that resulted from reckless behavior, criminal negligence, or a misdemeanor murder.

In Bonnie's case, involuntary manslaughter would not apply because her acts and mental state expressed in the case demonstrate there was an intentional killing of another human being. Although, Bonnie may argue that she didn't know that she killed another because she was intoxicated. That will not suffice because she demonstrated that she remembered things like someone almost kidnapping daisy and the potential kidnapper's appearance. Because of that, this demonstrates that she knew what she was doing.

Therefore, Bonnie is not likely guilty of involuntary manslaughter.

Defenses:

Imperfect Self-defense or Defense of another

Elements of imperfect self-defense:

defendant believed themselves and others to be in imminent danger;

the defendant believed that the use of deadly force was necessary to defend against the imminent threat; and

that one of these beliefs are believed to be unreasonable to a reasonable person.

Bonnie may raise this defense, because she felt that her daughter and other girls in the park were in imminent danger. This is demonstrated through her statement "stay away from those kids" at the soccer coach. This shows that she was thinking about those kids in that moment thinking they were in imminent danger. Bonnie may argue that the use of deadly force was necessary to defend against the imminent threat the man posed to the kids. Bonnie's belief that the man was a danger to the kids is unreasonable to a reasonable person because he was a soccer coach. A reasonable person would have assessed the environment and observed whether or not the man was a danger. A

reasonable person would not *immediety* assume a man running in a park to a group of kids was an imminent threat.

Therefore Bonnie will may not be granted the imperfect self-defense defense.

Mistake of Fact

The defendant can be not guilty of a crime if they did not have a specific intent or mental state to commit a crime because they reasonably did not know a fact or reasonably and mistakenly believed a fact. This may apply in this case because Bonnie mistook the soccer coach for the kidnapper. This mistake of fact is shown though the intent of Bonnie as discussed previously. Although, there was a clear mistake of fact on Bonnie's behalf, this mistake of fact is not reasonable. A reasonable person would not immediety assume that the man is the kidnapper because a reasonable person would assess the enviornement and determine logically if this man was an immenint threat to the kids.

Therefore, Bonnie may not be granted this defense.

Capacity

Someone can raise capacity defense if they are a child, mentally ill, or under the influence. Bonnie may argue that she did not have the capacity to act like a rational person becuase she just came home from drinking with friends at happy hour. This defense may be granted to Bonnie if she can prove that she completely was out of it which is unlikely because she has demonstrated mental awareness of her situation by remembering her daughter, and wanting to do something about it.

Therefore it is unlikely capacity defense would be granted.

2)

1. What Crimes can Alex and Barry be charged with?

Alex

Conspiracy

Conspiracy is defined as two or more people agreeing to take part in a crime and one or more actors taking a substantial step toward the furtherance of that crime manifesting the specific intent of the target crime.

A substantial step is defined as an affirmative action manifesting the actor's intention to carry out the target crime.

In this case, Alex and Barry agree that they should rob a local liquor store right before closing. This agreement illustrates that Alex and Barry had a clear agreement to commit the crime of robbery together. Alex procured two ski masks and a gun. Robbery is defined as the trespassory carrying away of an individual's property through the use of force or fear. Naturally, Alex and Barry do not wish to be identified and eventually prosecuted for their planned crime, so the masks are intended to conceal their identities while they commit the crime. The gun is necessary to implement force or fear when they demand money from the store clerk. Collecting these items is a substantial step in furtherance of the crime of robbery. Additionally, Barry steals a getaway car from a neighbor. Even though Alex has nothing to do with the stealing of the car, and in fact does not even know that Barry plans to steal the car until after the fact; since a conspiracy charge only requires a substantial step in furtherance of the conspiracy by at least one actor; Barry taking this action is enough to make Alex culpable for conspiracy even if he had not collected the mask and gun.

Accomplice

An accomplice is defined as anyone who aids, abets, encourages, or assists a principal actor in any way in committing of their crime, and manifests the specific intent for the principal to commit the target crime.

In this case, Alex ultimately decides not to follow through with committing the actual robbery with Barry. However, in procuring the mask and gun used by Barry he aided, abetted, and assisted Barry in his goal of committing a robbery. Additionally, as Alex is exiting the car on the way to the robbery he tells Barry to remember to put on his ski mask and then tosses Barry the gun. He does not make any attempt to talk Barry out of the robbery, and instead encourages him to go forward with it by providing him with necessary equipment i.e. the gun, and by giving a reminder to conceal his identity to avoid detection. Alex is aware of Barry's intent to rob the liquor store at the time he aids, abets, assists, and encourages Barry.

Pinkerton Doctrine

Under the Pinkerton Doctrine, all members of a conspiracy are vicariously liable for the crimes committed by all involved co-conspirators if the crimes were reasonably foreseeable in the course of committing the target crime.

Vicarious liability is defined as liability for a crime committed by a third party- a crime not committed by one's self.

As a result of the Pinkerton Doctrine, Alex is liable for crimes he did not commit that were committed by Barry and vice versa because they were in an active conspiracy.

Burglary

Burglary is defined as the unauthorized breaking into a building at night for the purpose of committing a felony there within. In modern law it has been expanded to include entering a building and remaining there for the purpose of committing a felony if that was the actor's intent when entering the building.

Barry decides to steal a getaway car from his neighbor. As described above, Alex is criminally culpable for this crime as well under the Pinkerton Doctrine. Stealing a get away car is reasonably foreseeable when agreeing to commit a robbery.

It is unclear from the given facts where the car was located when Barry stole the car. If the car was inside a garage and required Barry to unlawfully break into the home of the neighbor for the purpose of committing the felony (stealing the car) then both Barry and Alex are liable for burglary. However, if the car was located in the driveway, street, or somewhere outside of a physical structure it is more likely that Barry and Alex would be liable for larceny.

Larceny

Larceny is described as the trespassory taking of and carrying away of physical property of another with the intent to permanently deprive the owner of their belonging.

Physical property is defined as an item that can be physically touched and physically moved.

In this case, Barry enters the neighbor's car without the neighbor's possession and drives the car away. This satisfies the elements of trespassory taking and carrying away of physical property of another. Barry does not make any comments about returning the car, or borrowing the car. It can be inferred that he intends to permanently deprive the neighbor of his car.

As described above, Alex is criminally culpable for this crime as well under the Pinkerton Doctrine. Stealing a get away car is reasonably foreseeable when agreeing to commit a robbery.

Attempted Robbery

Robbery is defined as the trespassory taking of and carrying away of the physical

property of another through force or fear with the intent to permanently deprive the owner of their property.

Physical Property is defined Supra.

Attempt is defined as taking a substantial step beyond mere preparation to carry out the target crime.

While Alex was not physically present during the robbery, as a co-conspirator of the robbery he is still criminally culpable for the crime. The Pinkerton Doctrine also strengthens the claim that Alex is vicariously liable for the attempted robbery by Barry.

Barry makes it to the liquor store and begins to enter the store with the intention of robbing the store clerk. This is demonstrated by the fact that as he is walking in he is armed with the gun, and attempting to put his ski mask on to conceal his identity. Barry ultimately trips and is unsuccessful at getting his ski mask on, while simultaneously dropping his gun which scares people within the store, thus drawing their attention to him. At this point, Barry runs out of the store yelling that he was sorry and wasn't going to do anything. However, his walking into the store with the mask and gun are significant enough actus reus to demonstrate that he had the requisite mens rea - and intended to rob the store and only turned back because his identity was not concealed.

Assault

Assault is defined as an actor making an action that causes another to be in reasonable apprehension or fear of a harmful or offensive contact.

In this case, Barry drops a gun to the ground while walking into a liquor store attempting to put on a ski mask. These circumstances are adequate to reasonably provoke fear in patrons and the clerk within the store. It is reasonable for these people to assume that Barry intended to use the gun against them in these circumstances, and to be unsure how he will proceed now that the gun has fallen.

Through the theory of conspiracy and the Pinkerton Doctrine, Alex is liable for this crime even though he was not present at the time of its completion.

Barry

Conspiracy

Defined and analyzed supra.

Accomplice

Defined and analyzed supra.

Larceny

Defined and analyzed supra.

Attempted Robbery

Defined and analyzed supra.

Assault

Defined and analyzed supra.

2. What defenses do Alex and Barry have?

Alex

Burglary/Larceny

Alex could make a claim that he is not liable for the car theft because he was not actively involved in it, and was not even aware that Barry planned to carry it out until it had already occurred. However, he did not question Barry whatsoever about the car as far as we know. Additionally, theft of a getaway car is a reasonably foreseeable extension to the

planned target of robbery, thus making Alex liable via the Pinkerton doctrine as defined and analyzed above.

Conspiracy

Alex attempts to leave the conspiracy once he begins to sober up. He exits the car telling Barry that he no longer wants to go through with the robbery and even goes so far as to call the police anonymous tip line. However, at this point he has already aided Barry in preparing for the robbery. As he is exiting the car he provides Barry with the necessary equipment to carry out the crime i.e. the mask and gun and even reminds Barry to put the mask on. When he calls the tip line the recording specifies that the answering machine is not checked daily and directs callers to call 911 for urgent matters. Being that this is an in progress crime, a reasonable person would deem it an urgent matter. It appears that Alex was attempting to do the bare minimum to in an attempt to avoid criminal culpability, but not enough to meet the requirements of communicating to all members of the conspiracy that they are exiting the criminal enterprise, no longer aiding in any way, and contacting LE as is required in some jurisdictions.

Voluntary Intoxication

Defined Supra in Bonnie and Clyde scenario.

Despite being intoxicated, Alex and Barry both demonstrate that they are capable of forming a conscious stream of thoughts and forming intent when they go through the above described measures to work towards the target crime.

Barry

Voluntary intox - discussed and analyzed supra

Abandonment of the crime - he is too far committed when he walks in the store.

3. How should a jury decide the charges against Alex and Barry?

Alex

Conspiracy, accomplice, attempted robbery, larceny, and burglary, and assault.

Barry

Conspiracy, accomplice, attempted robbery, larceny, and burglary, and assault.

END OF EXAM