



California First-Year Law Students' Examination

**Essay Questions
and
Selected Answers**

October 2018



The State Bar of California
Committee of Bar Examiners / Office of Admissions

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ESSAY QUESTIONS AND SELECTED ANSWERS

OCTOBER 2018

CALIFORNIA FIRST-YEAR LAW STUDENTS' EXAMINATION

This publication contains the four essay questions from the October 2018 California First-Year Law Students' Examination and two selected answers for each question.

The answers were assigned high grades and were written by applicants who passed the examination. The answers were produced as submitted by the applicant, except that minor corrections in spelling and punctuation were made for ease in reading. They are reproduced here with the consent of the authors.

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

October 2018

ESSAY QUESTIONS



California First-Year Law Students' Examination

Answer all 4 questions.

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

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

If your answer contains only a statement of your conclusions, you will receive little or no credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

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

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

QUESTION 1

Becky is a highly employable and well-known bourbon distiller who has worked at several distilleries. One year ago she was offered and she accepted, a job as Chief Distiller at the Western Sky Distillery (Western Sky), at a salary of \$200,000 annually, for five years, provided that if her employment is terminated early, she will receive \$400,000 per year in damages for the remaining term of her contract. Becky and Western Sky signed a complete employment contract with those terms. However, two things have just happened:

First, the growing popularity of distilleries over the past 10 years has led to a worldwide shortage of oak barrels, which are required to age and produce bourbon. That shortage will in fact persist for at least several years or more, until such time as the barrel manufacturers will have increased production. Western Sky will now cease production of bourbon, and it has fired Becky for that reason. Western Sky does not deny the existence and validity of its contract with Becky.

Second, Becky has been offered a full time job as the host of a television show about bourbon producers, at a salary of \$100,000 for four years. Although the salary is less than she was paid at Western Sky, she is unable to find another job as a bourbon distiller because of the oak barrel shortage.

Becky has decided to take the television host job and to sue Western Sky.

1. What claims will Becky make and what remedies will she request? Discuss.
2. What defenses, if any, will Western Sky raise in its response to Becky's lawsuit? Discuss.
3. What will be the likely outcome of the case? Discuss.

QUESTION 1: SELECTED ANSWER A

Applicable Law

The common law governs contracts for services.

Becky is engaging in an employment contract with Western Sky. This is a contract for services.

The common law will govern the contract.

Valid Contract

A valid contract is one which the law will enforce. It must consent of mutual assent and consideration. Mutual assent is the requirement that each party agree to the terms and conditions of the contract. Consideration is that which is bargained for and given in exchange, and must be a legal detriment to each party.

The validity of the contract is not in dispute. Becky and Western Sky have agreed to the terms of the contract, which is for Becky to serve as Chief Distiller of Western Sky for 5 years at a salary of \$200k/year. There is valid consideration- as Becky will be providing her services as Chief Distiller, and Western Sky will pay her.

There is a valid contract.

1. Claims and Remedies of Becky

Covenants of the Contract

A covenant is a promise to do an act or perform a service.

Becky's covenant under the contract is to act as Chief Distiller. Western Sky has in return, promised to pay Becky \$200k/yr.

Breach

A breach is an unexcused failure to fulfill the obligations under the contract. A major breach goes to the essence of the bargain.

Western Sky has fired Becky after her service of one year. Western Sky will not be paying Becky for the remaining four years of the contract. Absent an excuse, covered, *infra*, Western Sky is under an obligation to employ and pay Becky, so long as Becky works for them, which she has done. Western Sky will be in major breach of contract for firing Becky and not paying her \$200,000/yr, as it is the entirety of what Becky has bargained for under the contract.

Western Sky is in breach of contract.

General Damages

General damages are those damages which naturally flow from the contract. The preferred calculation of damages are expectation damages, which are those the parties would have expected to receive under the terms of the contract. The calculation of damages would be reduced where Becky has saved from the breach of the contract.

Becky bargained for employment at \$200,000/yr for 5 years. She will thus have expected to be paid \$200,000 each year for 5 years, or \$1,000,000 in total. She has been fired after only one year, presumably after being paid her first year salary of \$200,000. Becky therefore expects to receive another \$800,000. Western Sky may argue that Becky can now take another job, and reduce the damages, covered *infra-*

avoidable consequences. Typically a time-savings alone does not reduce the measure of damages, but alternate employment might.

Becky will be owed \$800,000, or \$200,000/yr.

Avoidable Consequence Doctrine

Under the avoidable consequence doctrine, a party who is owed damages owes a duty to minimize those damages to a reasonable extent. For a breach of an employment contract, the employee is obligated to seek like kind employment to minimize his damages.

Becky has sought alternate employment, and was offered a full time job as a host of a television show about bourbon producers. She is being paid \$100,000/yr, so is still suffering damages of \$100,000/yr. Western Sky will argue that since the television show is about bourbon producers, it is in the same field of industry, and should be considered like kind employment. Therefore Becky would be obligated to accept it, and this salary would reduce her damages. Becky will argue, probably successfully, that being a host of a television show, even if it is about bourbon, is a substantially different job than a job as a Chief Distiller at a bourbon factory. Therefore, Becky would not be obligated to accept the job.

Still, Becky has accepted the job as host, because she was unable to find another job as a bourbon distiller. Becky will argue that because she could not find an alternate job as a distiller, she should be paid the full measure of damages, \$200,000/yr. Western Sky will argue that even if the television host is not the same a bourbon distiller, because Becky did accept the job, her damage should be reduced.

The court will likely agree that while Becky had no obligation to accept the job as a

television host, but since she did, her damages will be reduced by the difference in salary: \$100,000/yr for four years.

Becky has fulfilled her obligation under the avoidable consequence doctrine, and Western Sky's damages will likely be reduced by the amount of salary Becky has gotten, to \$100,000/yr for the four years remaining on her contract, or \$400,000.

Special Damages

Special damages are those contemplated at the formation of the contract, which identify special costs to the parties.

There are no special damages outside the terms of the contract.

Liquidated Damages

Liquidated damages are provisions in the contract which provide for a measure of compensation after a breach, where the calculation of damages may be difficult to ascertain, and the measure of damages is reasonable. They are not enforceable where the provision is merely a penalty.

Here, if Western Sky terminates the contract early, Becky is owed \$400,000/yr instead of \$200,000/yr. Becky may attempt to argue that the increased compensation is due to her losing the benefit of having a job- such as experience or prestige, but these are not generally rewarded as damages under a breach. The actual measure of damages was easily measurable, it is Becky's lost salary, and the liquidated damage clause which doubles this compensation has no reasonable basis. Therefore, Western Sky will successfully be able to argue that the liquidated damages clause was not valid, as the actual measure of damages could have been reasonably determined at the formation of the contract.

The damage clause of \$400,000/yr will not be enforceable.

2. Defenses of Western Sky

Divisibility of Contract

A contract that has multiple periods may be divided such that the obligations under each period must be fulfilled by each party.

Western Sky may argue that the contract was an annual contract of employment at \$200,000/yr. This may be true, but it does not mean that by fulfilling the first period of payment, Western Sky can discharge the remaining four years. Western Sky may have been obligated to pay \$200,000 at the end of the first year, and presumably did for the analysis, *supra*, but this does not excuse a breach of the remaining periods.

Divisibility of contract provides no defense for Western Sky.

Impossibility

Impossibility is a defense to the contract where circumstances have changed such that performance of the contract is totally impossible.

Although there is a world- wide shortage of oak barrels, they are still available. There is not a complete extermination of oak barrels. Therefore, at some price, Western Sky could procure oak barrels and continue with employment of Becky. Western Sky may argue the shortage caused them to cease production, it is seems apparent this is due to the cost of the oak barrels, not availability, as some are still being produced in the world.

It is not impossible for Western Sky to perform, and impossibility is no defense.

Frustration of Purpose

Frustration of purpose is a defense where the purpose in entering a contract has been completely frustrated.

Again, Western Sky will argue that it employed Becky to be their Chief Distiller. Since they are no longer making bourbon, they don't need a Chief Distiller. Their purpose in employing Becky has been frustrated. However, it was a choice by Western Sky to cease bourbon production, and was not brought about by unexpected actions of another party. In fact, there had been growing popularity of distilleries over the past 10 years. The circumstances leading to Western Sky's cease of production may have been apparent at the time of contracting. Regardless, Western Sky could continue to employ Becky and has voluntarily brought about the circumstances that may frustrate the purpose of employing Becky, namely, Western Sky has chosen to cease production.

Western Sky will have no defense of frustration of purpose.

Commercial Impracticability

Commercial impracticability may be a defense to a breach where circumstances of unforeseeably changed regarding the economic benefit to be gained by a party, the risk of change was not held by one party, and the change in commercial circumstantial, e.g., a cost increase of ~10x or more.

Western Sky will argue that a key part of its manufacturing process has become scarce and the cost has significantly increased, making bourbon production uneconomic. It is not clear how much the barrels cost, or how much they would lose by continuing production, but it seems unlikely that the cost has increased so substantially that

production is infeasible. Additionally, alcohol is likely a very liquid market, and some of the cost would be passed to the consumer, making production sustainable. Most importantly, the popularity of distilleries has been growing for 10 years. Becky will argue that Western should have been aware of this trend, and that the change in circumstances and risk of a barrel shortage was known at formation.

Since Western Sky could have foreseen the shortage of oak barrels, and there may not be a substantial enough shortage to warrant a production stop, commercial impracticability is likely no defense.

3. Outcome Summary

Western likely has no valid defense to absolve its duty to perform.

Since Becky has four years remaining on her contract at \$200,000/yr, she would be owed \$800,000.

The liquidated damage cause of \$400,000 is likely to be found to be punitive in nature, and unenforceable.

Becky's damages will likely be reduced due to her acceptance of the alternate job as a TV host, and will be reduced by that salary of \$100,000/yr by \$400,000, to a total expectation damage of \$400,000.

QUESTION 1: SELECTED ANSWER B

I. Becky Will Claim Breach of Contract By Western Sky

a. Elements of a Contract

A contract is an agreement that is legally enforceable. This requires an offer and acceptance, a meeting of the minds between the parties, legal capacity by the parties, legal subject matter of the agreement, and consideration for the benefits promised in the agreement. However, as Western Sky does not deny the existence or validity of the contract with Becky, no further analysis is required.

b. Western Sky's Termination is a Breach of the Employment Contract

To breach a contract, one party must repudiate or fail to perform one or all of its promised duties under the contract. Here, Western Sky bargained for Becky's extensive knowledge, skill, and goodwill in return for a promise that Western Sky would employ Becky for 5 years, pay her \$200,000 annually, and provide \$400,000 per year in damages for the remaining term of her contract should her employment be terminated early. Western Sky has terminated Becky's employment, and does not appear to have provided her any of the \$400,000 per year in promised damages. Therefore, Western Sky's termination and lack of payment of damages constitute breach of the employment contract.

II. Becky's Remedies

a. Liquidated Damages

Becky can request that Western Sky pay the agreed-upon liquidated damages of \$400,000 per year for the remainder of her employment term. She will need to argue that the damages caused by early termination were difficult to forecast at the time the parties entered into the contract, and that \$400,000 per year was a reasonable forecast at that time. If successful, Western Sky will be liable to Becky for the full \$400,000 per year for the remainder of her original employment term.

b. Expectation Damages

If her claim for liquidated damages is unsuccessful, Becky can request that Western Sky pay expectation damages based on her promised annual income for the remainder of the employment term. California rules surrounding damages are focused on the protection of expectation. This means that we will seek to place Becky in the same dollar position that she would be had the contract never been breached. In this case, Becky could recover her anticipated annual income of \$200,000 per year for the remainder of her employment term.

c. Reliance Damages

If Becky can request additional damages she incurred in reasonably foreseeable reliance on Western Sky's promises, she could recover those damages as well. She may have, for instance, purchased or leased a home close to Western Sky or enrolled children in local private schools under fixed term contracts. Becky would have the burden of proof to establish what these damages are, that they were actually incurred by reliance on Western Sky's promises, and that the expenses and reliance were reasonably foreseeable.

d. Incidental Damages

Finally, Becky can request reimbursement of any incidental damages incurred in dealing with the effects of Western Sky's breach of contract. These might include such things as expenses incurred in searching for a new job or traveling to interviews.

III. Western Sky's Defenses

a. Impossibility

Western Sky will raise a defense of impossibility due to the shortage of oak barrels. While it will attempt to point to the worldwide nature of the shortage and its own total cessation of production of bourbon in support of this defense, they will likely be unsuccessful as production of bourbon is not fully impossible. Some bourbon barrels (perhaps not as many as Western Sky desires, or as are necessary for their bourbon production to be economically viable) still exist and are still available. Since a defense

of impossibility requires complete impossibility even with infinite resources, and since the subject matter has not been destroyed, it is unlikely that this defense will succeed.

b. Impracticability

Western Sky will raise a better defense of impracticability due to the shortage of oak barrels. While economic cost alone is insufficient to establish impracticability, the worldwide nature and long anticipated length of the shortage support a defense of impracticability as continued production of bourbon will be substantially impracticable due to the lack of available barrels and the presumed spike in cost of purchasing remaining barrels. However, impracticability of production of bourbon is not by itself sufficient - Western Sky must show that it would be substantially impracticable to continue to employ Becky at Western Sky. Becky may argue that Western Sky could have found another position for her rather than terminate her completely, as her role is Chief Distiller, not Chief Bourbon Distiller. Western Sky will argue that the specific nature of her experience (a bourbon distiller) and the complete cessation of Western Sky's bourbon production preclude offering her another position. In light of this, Western Sky will argue it is substantially impracticable to pay a master bourbon distiller \$200,000 per year for the remainder of her five year employment contract when they no longer produce bourbon whatsoever. This is a strong defense, and will likely succeed or fail based on whether Becky can plausibly argue that other distiller duties were available unconnected to bourbon.

c. Frustration of Purpose

Western Sky will raise a defense of frustration of purpose. This requires that Western Sky have entered into the contract with a particular intended purpose, that the purpose was substantially frustrated by unforeseeable intervening circumstances, and that the other party knew of that intended purpose. Here, Western Sky will argue that they hired Becky - a well-known bourbon distiller - for the purpose of improving and promoting their bourbon production. Their bourbon production was completely shut down due to a worldwide shortage of required bourbon barrels, which shows substantial frustration by an intervening circumstance. While they will argue Becky knew of this purpose, it is not clear from the Question whether or not this is true. Regardless, the shortage of oak

barrels, while an intervening circumstance that substantially frustrated Western Sky's purpose, was caused by "the growing popularity of distilleries over the past 10 years", which seems to negate the unforeseeability requirement and doom this defense.

d. Unconscionability of Liquidated Damages Provision

Western Sky will raise as a defense unconscionability of the liquidated damages provision in the contract. See II.a. above for a discussion of the necessary elements of a liquidated damages provision. A party can show unconscionability in a liquidated damages provision when the amount of liquidated damages stipulated is excessive in such a way that suggests it is punitive, not a reasonable estimate of actual damages. Additionally, a fixed sum for all liquidated damages no matter the circumstances or harm suggests unconscionability. Here, the liquidated damages amount is twice Becky's normal annual salary, which strongly suggests it was in the nature of a punitive measure rather than an estimate of actual damages. As such, Western Sky is likely to be successful in barring recovery of the liquidated damages.

e. Becky's Duty to Mitigate Avoidable Damages

Finally, Western Sky will raise as a defense Becky's duty to mitigate avoidable damages. The damaged party has a duty to take reasonable steps to mitigate their actual damages or their recovery will be reduced by the amount of avoidable damages. In an employment contract, this includes a duty to find substantially similar employment at a reasonable rate of pay. Here, Becky has found a job as the host of a bourbon TV show at a salary of \$100,000 for the next four years. The success of this defense will turn on a factual determination of whether this job is substantially similar to her prior job. Given her high profile and the subject matter of the TV show, it is likely that Becky has a duty to accept this job. Her expectation damages will be reduced by the \$100,000 per year for 4 years she will receive or could have received from the new job.

IV. Likely Outcome

Given the above facts, it is likely that Becky will be successful in recovering her salary for the remainder of her employment term as expectation damages, plus any incidental or reliance damages, minus \$100,000 per year in salary for the next four years in avoidable damages, unless Western Sky is successful in arguing impracticability as a defense to their breach. Finally, Western Sky is likely to prevail in barring recovery of the liquidated damages stipulated in the contract.

QUESTION 2

Andrew is facing charges of battery against his ex-girlfriend, Belle. Andrew asks his present girlfriend, Claire, to help him convince Belle to testify that the battery never happened. Andrew and Claire agree that he will call Belle and ask her to meet him at his place of work. Claire will be waiting in the parking lot to confront Belle and ask her not to testify against Andrew.

Andrew makes the call and Belle agrees to meet Andrew in the parking lot of his work. Claire is waiting in her car in the parking lot. When Belle arrives, Claire gets out of her car and confronts Belle. She yells at her to withdraw her complaint against Andrew. Andrew comes out of the building and tells Claire to get Belle. Belle has a knife on her. She brought it with her for protection.

When Belle sees Claire coming over to her, she brandishes the knife. Angry words are exchanged and each one threatens the other. Claire goes back to her car, gets a baseball bat out of the back seat and goes after Belle. Belle stabs Claire with her knife, causing serious bodily injury. The police are called. Andrew and Belle are arrested and Claire is transported to the hospital, where she later dies from her wounds.

1. With what crimes, if any, can Andrew and Belle be reasonably charged? Discuss.
2. Do Andrew or Belle have any defenses? Discuss.

QUESTION 2: SELECTED ANSWER A

PEOPLE v. ANDREW

SOLICITATION (OF WITNESS TAMPERING)

Solicitation is the asking of another to engage in a criminal act. The asking, itself, is sufficient to complete the crime, whether or not the other person agrees. Here, Andrew asked Belle to convince Claire to get Claire to state that the battery never happened. If witness tampering is a crime in his jurisdiction, he should be charged with criminal solicitation.

CONSPIRACY

Conspiracy is the expressed and understood agreement between two or more parties, to engage in a criminal act or to complete a lawful act through criminal means. At common law, conspiracy consisted of specific intent and the conspiracy was complete as soon as the agreement was formed. Modernly, an overt act in furtherance is also required. An overt act can be as simple as preparation, such as purchasing required materials to complete the target crime.

Here, Andrew completed an overt act in furtherance, which was making the phone call to Belle.

MERGER

Some lesser crimes merge with larger crimes. Solicitation will merge with any attempted crime. Conspiracy will be charged separately.

Pinkerton rule

Under the Pinkerton doctrine, all co-conspirators will have accomplice liability for all acts of their co-conspirators, when the acts are in furtherance of the conspiracy and are foreseeable outgrowths of the conspiracy. Here, Andrew asked Claire to go talk to Belle, which is an act of witness tampering, at most.

Wharton's Rule

Wharton's Rule says that at least one more co-conspirator than the criminal act requires, is necessary to form a conspiracy. Here, the acts committed in furtherance of the conspiracy to rob a bank could have been completed by one person. A conspiracy to commit witness tampering, but no other crime, was committed here.

ACCOMPLICE LIABILITY

An accomplice is present at the scene of the crime, intends for the crime to be committed, and provides aid or encouragement. Accomplice liability will only apply to acts which are in furtherance of the conspiracy and foreseeable outgrowths. Here, there are no facts to suggest that Andrew was aware the situation would turn violent. Andrew's liability should be cut off at the conspiracy, or entirely. Here, Andrew did not intend for anyone to get hurt and did not provide aid or encouragement for Belle to stab Claire.

DEFENSES

No mens rea

Andrew will defend against the solicitation and conspiracy charges by claiming that he had no criminal intent to solicit, conspire, or commit any acts in furtherance. He was not part of Belle's plan or actions, and did not provide aid or encouragement.

PEOPLE v. BELLE

ASSAULT

Assault is a volitional act that places another person in reasonable apprehension of an immediate harmful or offensive touch. Here, Belle came at Claire with a knife. If Claire was in apprehension of being harmed by the knife, an assault was completed.

BATTERY

Battery is a volitional act that causes a harmful or offensive touch to another person. Here, Belle stabbed Claire, which is a harmful touch. Battery completed.

AGGRAVATED BATTERY

Battery committed with a deadly weapon is elevated to aggravated battery. Here, Belle used a knife so she could be charged with aggravated battery.

HOMICIDE

Homicide is the unlawful killing of a human being. Here, Claire was killed by a stabbing. The facts are clear that a homicide occurred.

MERGER

Rule supra. Here, the battery will merge with the homicide.

CAUSATION

Causation must be established in homicide. The death must be both the actual and proximate cause of the defendant's acts. Here, the death of Claire occurred as the result of stabbing wounds. Stabbing and blood loss was the actual cause. But for Belle's stabbing Claire, she would not have been fatally injured. Causation established.

MURDER

Murder is a homicide committed with malice aforethought. Murder is a general intent crime and, therefore, the intent can transfer.

MALICE

Malice aforethought for murder is found one of four ways: 1) intent to kill; 2) intent to inflict serious bodily injury; 3) reckless conduct/wanton disregard for human life ("depraved heart"); or 4) felony murder.

Intent to kill

Intent to kill is wanting to end a person's life. This intent can transfer from the person intended to the person actually killed. Here, Belle may have intended to kill Claire.

Intent to inflict serious bodily injury

Intent suffices when a victim is killed as a result of the intention to inflict serious bodily injury. Belle intended to cause Claire serious bodily injury by stabbing her with a knife because this is known to cause serious injury or death. Intent established.

Reckless conduct/wanton disregard

This is conduct which has a high degree of likelihood to cause death, and is performed with reckless disregard to the high probability of causing death. This is also called having a "depraved heart." This element is unnecessary to establish, as intent to cause bodily injury is established.

Felony murder

Will not apply.

DEGREE

Murder that involves premeditation and deliberation is first degree murder. All other murders are second degree. With respect to felony murder (supra), felonies which are not enumerated as carrying a first-degree murder implication will be second-degree murder.

Premeditation and Deliberation

Premeditation and deliberation is what separates first-degree from second-degree murder. Premeditation is actually planning and formulating the act with a cool mind and deliberation is contemplating the result. Carroll theory says that premeditation and deliberation are the formulation of a plan. The Anderson theory says that any amount of premeditation and deliberation, even for a moment, is sufficient. Here, the state will try to establish beyond a reasonable doubt that Belle contemplated killing Claire before she stabbed her. It is unlikely that this element will be found.

DEFENSES

EXCUSE, JUSTIFICATION, MITIGATION

Mitigation to Manslaughter

One can mitigate murder to manslaughter when "heat of passion" existed and there was adequate provocation. Heat of passion is a momentary escalation of emotions that may lead one to an impulsive homicidal act. Adequacy of provocation will be decided on both an objective and subjective standard. Here, Belle may mitigate to manslaughter by claiming that the events happened so fast she impulsively stabbed Claire; and that

Claire's brandishing a baseball bat was adequate provocation.

Self-Defense

One can be justified in committing homicide when one acts in reasonable defense of one's self, in order to prevent serious bodily injury or death. Here, Belle will claim self-defense because she brought the knife for protection and used it spontaneously when Claire brandished a baseball bat at her. This defense will likely be effective.

QUESTION 2: SELECTED ANSWER B

State v. Andrew

Solicitation

A person counsels, commands, or encourages another person to commit an unlawful act.

Andrew who was facing charges of battery against his ex-girlfriend Belle asked his present girlfriend, Claire to help him convince Belle to testify that the battery never happened. Here Andrew is encouraging his current girlfriend, Claire to help him commit an unlawful act of perjury at one of his hearings.

Andrew may be charged with solicitation to commit perjury.

Conspiracy

Under common law, conspiracy is when two or more persons agree together to commit an unlawful act or commit a lawful act by unlawful means. Under modern law, an overt act is only required for a conspiracy. The modal penal code provides for a unilateral conspiracy where there is no agreement but one person has the specific intent to commit a crime.

The facts state that Andrew and Claire agreed that they will meet with Belle to convince her to testify that Andrew did not commit a battery. Here there are two or more persons involved which are Andrew and Claire. Additionally, when Belle went to wait in her car for Belle to arrive, this constituted an overt act. The unlawful act was to convince Belle to commit perjury.

Andrew may be charged with conspiracy to commit perjury.

Pinkerton's Rule

In a conspiracy, a co-conspirator may be charged with the crimes of other co-conspirators that are in furtherance of the target crime, or that are a natural or probable consequence of the target crime.

Andrew who is a co-conspirator with Claire would be charged with the crimes of Claire that are foreseeable.

Pinkerton's Rule applies to Andrew.

Assault

An intentional threat of battery that creates reasonable apprehension of imminent bodily harm. In criminal law, assault is an attempted but failed battery even when there was no apprehension in the victim.

When Belle arrives in the parking lot, Claire gets out of her car and confronts Belle. Andrew tells Belle to get Belle who is holding a knife. Claire then goes back to get a baseball bat and goes after Belle. However, Belle stabs Claire causing serious injury to her. Here it is established that there was attempted battery when Claire got her baseball bat and went after Belle at the instructions of Andrew. The facts state that Belle had exchanged angry words with Claire and that she had a knife for her protection which establishes that it is likely that she did not feel any apprehension. Andrew would contend that Claire use **self-defense**: A person that reasonably believes themselves to be threatened with imminent bodily harm can use objectively reasonable force to defend. Andrew would argue that when Belle brandished her knife, Claire had to defend with reasonable appropriate force, which was the use of her baseball bat. However, a court would likely find that when Claire went back to her car, she could have called the police or escaped in some way and that there was no threat of harm to her. Further, Andrew is likely much larger in size than Belle, and although she had a knife, he could have overpowered her and a defense of self-defense would likely not meet a court's requirements.

Andrew may be charged with the assault of Claire.

Battery

An unlawful application of force to another person.

The facts show that neither Claire nor Andrew used any type of unlawful force to Belle.

After Belle stabbed Claire, the police were called and nothing further took place.

Andrew would not be charged with battery.

Homicide

The killing of a human being by another human being.

Claire was stabbed by Belle during their confrontation which resulted in Claire's death.

There was a killing of a human being by another human being.

There was a homicide.

Actual Cause

A cause that starts, ignites, or makes possible the result that follows satisfies the "But for" test or Substantial Factor Test.

But for Andrew asking Claire to call Belle and meet with her at his place of work, Claire would not have died.

Andrew is the actual cause of death to Claire.

Proximate Cause

An actual cause is a proximate cause when it is closely connected enough to the resulting harm without any independent intervening unforeseeable events that break the chain of causation.

When Belle brandished her knife and then stabbed Claire with her knife, this was an independent intervening event that caused the ultimate death of Claire. However, it is foreseeable that a person that is facing charges from another, then confronting them, might result in some type of harm to a person. Here, when Andrew asked Claire to

meet with him and Belle at his work's parking lot, it was foreseeable that tempers could flare and a fight could ensue resulting in serious injuries.

Andrew was the proximate cause of death to Claire.

Murder

A homicidal killing that is committed with malice aforethought. Malice aforethought is the mens rea that is required for murder and is indicative by the four intentions of an intent to kill, an intent to inflict great bodily harm, wanton or willful disregard for human life, or an intent to commit a dangerous felony.

Here Andrew did not have an intent to kill Claire as expressed by his actions to simply have her convince Belle to not testify against him. Further, Andrew did not have an intent to kill. Andrew also did not display any type of reckless disregard or willful wanton conduct that was result in the death of Claire. Nor did Andrew have the intent to commit a dangerous felony.

Depraved Heart Murder

The deliberate creation of extreme risks with reckless disregard for another person's life.

Here the facts show that Andrew had deliberately told Claire to meet with Belle who filed a complaint against him for battery. This meeting was reckless and created extreme risks that tempers would flare and a fight might develop, which ultimately did. Andrew would argue that he did not intend to create any type of risky environment in which Claire and he could convince Belle to not testify against him.

Andrew may be charged with Depraved Heart Murder.

Involuntary Manslaughter

A unintentional homicide that is committed by the use of gross negligence, or of a crime that is not covered under the felony murder rule.

Here the facts show that Andrew was negligent to let Claire meet with Belle to ask her

to not testify against him in court. This is because it resulted in her being stabbed by Belle and essentially her death.

Andrew may be charged with Involuntary Manslaughter.

State v. Belle

Assault

See supra.

When Belle saw Claire coming over to her, she brandished her knife. Belle subsequently stabbed Claire with her knife which evidences that there was not a failed battery attempt.

Claire would not be charged with Assault.

Battery

See supra

When Belle stabbed Claire with her knife, she caused an unlawful application of force to her. Belle would contend a defense of self-defense in that when Claire came back with a baseball bat, she reasonably felt threatened with bodily harm, and that she used objective reasonable force. Under the majority rule, a person can defend with the same type of force that they are threatened with. Here, Belle used reasonably apparent necessary force to defend herself.

Belle would not be charged with Battery.

Homicide

See supra

When Belle stabbed Claire this constituted a killing of a human being by another.

Actual Cause

See supra

But for Belle stabbing Claire, Claire would not have later died after she was transported to the hospital.

Belle was the actual cause of death of Claire

Proximate Cause

See supra

There were no independent intervening unforeseeable events that broke the chain of causation. When Belle directly stabbed Claire, she later died from her wounds.

Belle is the proximate cause of Claire's death.

Murder

See supra

Belle did not display an intent to kill. However, when she brandished her knife in front of Claire, it is established that Belle had an intent to use her knife in an attack. Therefore, she had the intent to inflict great bodily harm. Further, Belle's bringing a knife to the meeting with Claire and Andrew showed a willful and wanton conduct on her party. Belle's commission of a battery was not a dangerous felony.

Belle committed a murder.

First Degree Murder

Murder that is committed by lying in wait, poison, torture, bomb, or other premeditated and deliberate means. Murder is committed by application of the felony murder rule. **Felony Murder Rule:** During the commission of an inherently dangerous felony (Burglary, Arson, Rape, Robbery, Mayhem) death occurs, and the death is causally related to that felony and not a lesser included offense, the felon may be charged with

first degree murder.

Here the facts indicate that Belle brought the knife with her for her protection.

Therefore, there was no actual intent to kill Claire. Further, the felony murder rule would not apply here as Belle did not commit a felony covered by the felony murder rule.

Belle would not be charged with first degree murder.

Second Degree Murder

Murder that is committed but is not first degree murder.

Here the murder of Claire by Belle was not first degree. Since Belle displayed the mens rea required for murder by an intent to inflict great bodily harm and willful and wanton conduct, she had committed murder that was not first degree. Belle may contend a **Defense of Necessity**: A person acts in an emergency situation to protect him or herself from a threatened injury to person or property. Belle would contend that she acted in an emergency situation to use her knife due to the attack that Claire was committing to protect her life. This defense would likely prevail as Claire went back to her car while she was angry and returned with a baseball bat that could cause serious injuries.

Belle may be charged with second degree murder. However, her defense may allow her to not be charged.

Voluntary Manslaughter

A murder that is committed with mitigating circumstances. A mitigating circumstance is heat of passion. Heat of passion is present when there is an adequate provocation that leads a reasonable person to lose self-control, that person loses normal self-control, and there is not enough cool down time from the provocation and the killing to cool down.

The facts show that there were angry words exchanged between Belle and Claire due to the complaint Belle filed against Andrew. Belle stabbed Claire, which resulted in her

death. There was adequate provocation here and not enough cool down time for Belle to prevent her attack from occurring.

Belle may be charged with voluntary manslaughter.

QUESTION 3

Neighbor has owned property in Mountain Town since 1965. BlastCo is a blasting company situated in Mountain Town and has been in operation since 1970. In 1980, Pet Farm moved its bunny farm into Mountain Town and began to breed bunnies for sale as pets. Pet Farm is situated just outside of the city limits, in the rural portion of Mountain Town. The property next to Pet Farm is a residential property owned by Neighbor.

In 2015, Neighbor purchased a classic 1957 Jeep Willys automobile to restore as a hobby. By 2017, the jeep was almost finished, waiting for installation of brakes and wood paneling on the doors. It was perched at the top of Neighbor's steep driveway with its front wheels improperly secured by blocks. Once completed, the jeep would be worth \$50,000.

On March 3, 2017, BlastCo was blasting a new train tunnel about 3 miles from the properties owned by Pet Farm and Neighbor. While blasting, an unusual jolt occurred, which caused Neighbor's jeep to jump off its blocks and roll down the driveway. Neighbor was not home at the time. Neighbor's jeep careened across the street and entered Pet Farm's property by busting through a thin wooden fence. While on Pet Farm property, Neighbor's jeep ran over and killed 22 Holland Lop rabbits owned by Pet Farm, worth about \$100 each. The jeep eventually came to rest at the bottom of a ravine, damaged beyond repair. When Neighbor returned home, he saw the gaping hole in the fence and immediately called his lawyer.

What claims and defenses, if any, do Neighbor, BlastCo, and Pet Farm have against each other, and what damages can be recovered? Discuss.

QUESTION 3: SELECTED ANSWER A

Neighbor (N) v. BlastCo (B)

What claims do N have against B; and what defenses (if any) can B assert?

STRICT LIABILITY

Strict liability is imposed, without regard to a defendant's intent, or breach of duty to use reasonable care. To establish a prima facie case, the plaintiff must prove:

1. The nature of the defendant's activity imposes an absolute duty to make safe;
2. The dangerous aspects of the defendant's activity is the actual and proximate cause of the plaintiff's damages; and
3. Damage to plaintiff's person or property.

ABNORMALLY DANGEROUS ACTIVITY

There are two elements to determine if an activity is abnormally dangerous:

1. The activity creates a foreseeable risk of serious harm, even when reasonable care is exercised by all actors;
2. The activity is not a matter of common usage in the community.

Here, N will argue that B's activity of blasting a new train is abnormally dangerous, because blasting is an activity that creates a foreseeable risk of harm, no matter if reasonable care is exercised by all actors. Further, N will argue that because B's activity of blasting is abnormally dangerous, the activity imposes an absolute duty on B to make safe. Moreover, N will argue that the blasting is the actual cause of N's jeep jumping off the blocks and suffering the damage to the jeep. B will argue that B has been in business for many years, without experiencing the issue of the unusual jolt; but N will counter B's argument that the risk creates a foreseeable serious harm, in which absolute duty is imposed.

Therefore, N may prevail in a strict liability claim against B. **N may recover actual damages** for the repair of his jeep.

PetFarm (P) v. Neighbor (N)

What claims can P assert against N, and what defenses (if any) can N raise?

INTENTIONAL TORT

An intentional tort is a civil wrong, in which the plaintiff may bring a cause of action against the defendant; and the defendant will be liable to the plaintiff, if found to be liable for the intentional tort(s). To establish a prima facie case for an intentional tort, the plaintiff must prove:

1. the defendant committed a volitional act;
2. intent - which can either be "specific" (defendant intended to bring about a specific consequence); or "general" (the defendant knew with substantial certainty the result would occur); and
3. causation - which is generally satisfied if the defendant's conduct is a substantial factor in bringing about the plaintiff's harm.

TRESPASS TO LAND

Physical invasion of the plaintiff's real property.

Here, P will argue that N jeep invaded his property, by busting through the wooden fence, resulting in the killing of P's 22 rabbits. N will argue that he did not have the volitional intent of his jeep to trespass onto P's property. P will argue N had general intent, because the brakes were not installed on the jeep, but the jeep was parked on a steep driveway, in which a reasonable person would ascertain that a vehicle without brakes would roll down the driveway. Further, P will argue that n's conduct of the jeep coming onto the driveway is what killed P's rabbits.

Therefore, unable to establish volitional intent, P will not prevail against N under trespass to land.

NEGLIGENCE

a duty on the part of the defendant to conform to a specific standard of conduct, for the protection of the plaintiff, against an unreasonable risk of harm. To establish a prima facie case, plaintiff must prove:

1. a duty on the part of the defendant;
2. breach of that duty;
3. actual and proximate cause; and
4. damages

DUTY

A duty is owed to all foreseeable plaintiffs. Under Cardozo view (majority), plaintiff must be in the foreseeable zone of danger. Under Andrews view (minority), everyone is a foreseeable plaintiff.

Here, P's property is across the street from N's property, in which P will argue P's property is in the foreseeable zone of danger. Further, P will argue that N had a duty to keep his jeep securely parked, because N's jeep did not have brakes.

Therefore, P will prove a duty owed by N.

BREACH OF DUTY

Breach of duty occurs when the defendant's conduct falls short of the duty owed to the plaintiff.

Here, P will prove N's breach under the doctrine of **RES IPSA LOQUITUR**

In some cases, the very occurrence of an event may tend to establish a breach of duty; in which ***the plaintiff must prove***:

1. the accident causing the injury is the type that would not normally occur, unless someone was negligent;
2. the negligence is attributable to the defendant;
3. plaintiff must show freedom from fault.

Here, P will argue that N's failure to have his jeep secure; thus N's' negligence of parking his jeep on a steep driveway without brakes is something a reasonable person would not do and N was negligent in parking the jeep in that manner. P will further argue the negligence is in fact attributable to N, because N left the jeep in the driveway to wait for brakes and other items to restore the vehicle. Moreover, P will prove freedom from fault, because P had nothing to do with N's jeep.

Therefore, P may establish breach of duty against N by invoking the doctrine of *res ipsa loquitur*.

ACTUAL CAUSE

An act or omission to act is the cause in fact of an injury, if the injury would not have occurred "but for" the act.

Here, but-for N parking his jeep on his steep driveway without brakes, the jeep would have never careened onto P's property, killing P's rabbits.

Therefore, there is actual cause.

PROXIMATE CAUSE

The connection between the breach of duty and the injury is foreseeable and not too remote.

Here, P will argue the connection between N's breach of duty by parking his jeep in the steep driveway without brakes and the killing of P's rabbits is foreseeable, because N's jeep was on a slope without brakes, P's property is across the street from N's driveway, in which P's rabbits were on P's property.

DAMAGES

A plaintiff has a duty to mitigate their damages. Plaintiff can recover general damages for pain and suffering, emotional distress, non-economic losses; and special damages for medical expenses, loss of wages, economic losses, etc.

Here, P may argue he suffered emotionally due to the death of his rabbits. Because P has a farm, it is reasonably ascertainable that P's rabbits provided economic benefits for P.

Therefore, P may recover general and special damages.

N'S DEFENSES TO NEGLIGENCE

CONTRIBUTORY NEGLIGENCE

In a contributory negligence jurisdiction (minority), the plaintiff is completely barred from recovery if the plaintiff's negligent conduct contributes to the injury.

Here, there is no evidence to infer P was negligent.

Therefore, this defense will fail.

COMPARATIVE NEGLIGENCE

In a comparative negligence jurisdiction (majority), the plaintiff's recovery is reduced by the percentage of the plaintiff's harm.

PURE COMPARATIVE FAULT

Plaintiff's recovery is reduced by the percentage of the plaintiff's negligent conduct.

MODIFIED COMPARATIVE FAULT

Same as pure comparative fault; plus, if plaintiff's percentage exceeds 50%, plaintiff's recovery is completely barred.

Here, there is nothing supportive in the evidence that P has contributed to their damages.

Therefore, N's comparative negligence will fail.

ASSUMPTION OF THE RISK

Plaintiff is completely barred from recovery as plaintiff assumed the risk knowingly and voluntarily, whether expressly or impliedly.

Here, there is nothing in the evidence to support that P assumed the risk of their damages.

Therefore, N's assumption of the risk defense will fail.

JOINT TORTFEASORS

Here, because N will be liable for P's damages, N may be able to apportion his negligence with B, because N's conduct started from B's abnormally dangerous activity (discussed above).

JOINT AND SEVERAL LIABILITY

Where two or more negligent acts combine, to proximately cause an indivisible injury, the negligent actors may be jointly and severally liable. If the injury is divisible, each defendant is liable only for the identifiable portion.

Here, both acts of B and N caused P's damages. The jury would be able to determine,

from the evidence, if P's injury is divisible.

Therefore, B and N will be jointly and severally liable to P; and liable for their own portion if the injury is divisible.

CONTRIBUTION

Under contribution, defendants that are equally responsible will share the judgment amount equally.

Here, P's damages are \$100 x 22 (22 rabbits). The jury may need to determine if B and N are equally responsible or not.

Therefore, if N and B are equally responsible, they will share the judgment amount equally.

COMPARATIVE CONTRIBUTION

Contribution is imposed, in proportion to the relative fault, of the various defendants.

Here, if the jury determines that B and N are not equally responsible for P's damages, their contribution will be imposed based on their own relative fault as to the negligence.

Pet Farm (P) and Neighbor (N) v. BlastCo (B)

Can P and N prevail in a nuisance claim against B?

NUISANCE

Nuisance is not a separate tort in itself; rather, it is a type of harm that is the invasion of the private property of public rights.

PRIVATE NUISANCE

Private nuisance is the substantial and unreasonable interference, with another private individual's use or enjoyment, of his property, that he actually possesses or has an immediate right of possession.

Here, N and P will argue that they both, at the minimum, has an immediate right of possession in their properties, in which B's blasting caused a substantial and unreasonable interference with N's property because the B's jolt caused N's jeep to damage P's property and kill P's rabbits, resulting in N's jeep resting at the bottom of the ravine. P will argue he suffered an unreasonable interference because of the jolt that

sparked the domino effect of N's jeep trespassing onto P's property and the damages that resulted from it (discussed above). Both P and N will argue that the jolt that came from B is a nuisance, because the interference was intangible.

Therefore, P and N have a nuisance claim against B.

NUISANCE REMEDIES

DAMAGES

The legal remedy for damages is usually awarded to the plaintiff.

Supra N and P's damages.

Therefore, N and P may be awarded actual damages.

INJUNCTION

An injunction is awarded, when the legal remedy of damages are not available or monetary damages are inadequate.

Here, the legal remedy of damages are available for both N and P.

Therefore, it is unlikely that N and P may obtain an injunction.

QUESTION 3: SELECTED ANSWER B

NEIGHBOR v. BLAST CO.

STRICT LIABILITY

DEFENDANT will be STRICTLY LIABLE for the DAMAGES ACTUALLY and PROXIMATELY CAUSED to PLAINTIFF by their INHERENTLY DANGEROUS and UNUSUAL ACTIVITIES.

Strict Liability is LIABILITY WITHOUT FAULT; therefore, Plaintiff does not need to show that DEFENDANT BREACHED, nor does REASONABLE CARE BY DEFENDANT eliminate liability when DEFENDANT is performing INHERENTLY DANGEROUS ACTIVITIES.

Here, Blast Co is a Blasting company. The facts state that Blast CO was blasting a new train tunnel just 3 miles away from Neighbor. Blasting is an INHERENTLY DANGEROUS and UNUSUAL ACTIVITY; therefore, Blast Co will be held strictly liable for damages caused.

DUTY

The facts state that Neighbor's property, where Neighbor's jeep was parked, was only 3 miles away from the blasting; therefore, Neighbor was in the zone of danger created by Defendants, since blasting a train tunnel would no doubt place people within several miles away from the blasting site (especially those within 3 miles away), in an area which could be adversely affected or damaged by the blasting. Blast CO owed a duty to all those which were within this zone of danger, and since blasting is inherently dangerous, and no amount of precaution could prevent harm, BlastCo would be STRICTLY liable for damage resulting to people or property located within this several mile radius of the blast, which includes Neighbor.

The facts state that due to Blast Co's blasting, an unusual jolt occurred, which caused Neighbor's jeep to jump off its blocks and roll down the hill, ultimately damaging Neighbor's jeep beyond repair.

ACTUAL CAUSE

Blast Co's blasting the train tunnel was the ACTUAL cause of Neighbor's damage because BUT FOR the blasting, Neighbor's jeep would not have jumped off the blocks and rolled down the hill.

PROXIMATE CAUSE

Blast Co's blasting was the PROXIMATE cause of Neighbor's damage because Blast Co's blasting set into motion a chain of events, that was unbroken by a SUPERSEDING event which broke the chain of causation. Were it not for the blasting, Neighbor's car wouldn't have jumped the blocks, rolled down the hill, crashed through the PetFarm fence, and eventually come to rest at the bottom of a ravine where it was damaged beyond repair.

Neighbor's jeep was damaged beyond repair, and since the facts stipulated that the jeep would be worth \$50K once finished, and Neighbor was almost finished, Neighbor would be entitled to damages of \$50K, minus the costs of the nominal work required to fully complete the jeep.

DEFENSES

Blast CO may argue that having a Jeep on blocks was not foreseeable; however, this argument would fail because many car owners park their cars in driveways, and Defendant must take Plaintiff as they find them; in this case, Plaintiff happened to have a steep driveway.

CONTRIBUTORY NEGLIGENCE

At common law, if PLAINTIFF was also NEGLIGENT (by any measure), that negligence would bar recovery.

BlastCo may argue that since Neighbor's wheels were improperly secured, Neighbor

was negligent for not acting as a reasonably prudent car owner who stored their car on a steep driveway would.

However, Neighbor would argue that they had been working on Jeep for nearly 2 years (from 2015 to 2017), and it is reasonable to infer that during that time, Neighbor stored or secured the jeep in the same way it was secured at the time of the blast, and the jeep had never rolled down the driveway before; therefore, the only reason it rolled down the driveway was due to Blast Co's inherently dangerous act of blasting and BlastCo would remain liable.

Moreover, Blast Co's blasting set the stage for the damage, and even if the Neighbor improperly secured the vehicle, under this doctrine, BlastCo takes on the responsibility for the other circumstances.

COMPARATIVE NEGLIGENCE

While jurisdictions vary, modernly, liability for negligence is proportioned based on the percentage of negligence.

However, since BlastCo is strictly liable, this defense may offset some of the damages, but will not shield Blast CO.

PET FARM v. BLAST CO.

STRICT LIABILITY

Strict liability defined supra.

Here, Blast Co is a Blasting company. The facts state that Blast CO was blasting a new train tunnel just 3 miles away from Neighbor. Blasting is an INHERENTLY DANGEROUS and UNUSUAL ACTIVITY; therefore, Blast Co will be held strictly liable for damages caused.

The facts state that Pet Farm was only 3 miles away from the blasting; therefore, Neighbor was in the zone of danger created by Defendants, since blasting a train tunnel would no doubt place people within several miles away from the blasting site (especially

those within 3 miles away), in an area which could be adversely affected or damaged by the blasting. Blast CO owed a duty to all those which were within this zone of danger, and since blasting is inherently dangerous, and no amount of precaution could prevent harm, BlastCo would be STRICTLY liable for damage resulting to people or property located within this several mile radius of the blast, which includes Pet Farm.

The facts stipulate that due to the blast, Neighbor's jeep rolled into Pet Farm's property busting through the thin wooden fence & killing 22 Holland Lop rabbits.

Blast Co's Blasting was the ACTUAL cause of Pet Farms damages because BUT FOR the blast, Neighbor's car wouldn't have jumped the blocks, rolled down the driveway, crashed through Pet Farm's fence (damaging the fence), and would not have ran over and killed 22 rabbits.

Blast Co's Blasting was the PROXIMATE CAUSE of Pet Farm's damages because their blasting set into motion a chain of unbroken events which are directly linked to the damaged fence and killed 22 rabbits. There were NO independent or superseding acts which broke this chain of events. The only reason that the rabbits were killed was because the jeep ran over them after crashing through the fence, and the only reason that the jeep crashed through the fence was because the jeep rolled down the Neighbor's driveway, and the only reason the jeep rolled down the neighbor's driveway was because the jeep jumped off its blocks, and the only reason the jeep jumped off its blocks was because Blast Co blasted a train tunnel just 3 miles away. All of these causes were dependent on Blast Co's blasting, and therefore, Blast Co's blasting was the proximate cause of Pet Farm's damages.

Therefore, BlastCo is liable to Plaintiff for negligence and owes Plaintiff actual damages of \$2,200 for the rabbits ($\100×22) plus the costs to repair the fence.

DEFENSES

Comparative & contributory negligence (defined supra) would fail because Blast CO was strictly liable for the damage.

Moreover, there is no mention of any negligence on Pet Farm's part, besides the fact

that their farm had a "thin" wooden fence. However, the wooden fence would be in place to corral the rabbits and would not have been intended to act as a barricade for a vehicle plowing through it; therefore, this was not foreseeable and Pet Farm would have no duty to erect a barricade around the farm to stop jeeps from plowing through.

PET FARM v. NEIGHBOR

NEGLIGENCE

NEGLIGENCE will be found when DEFENDANT OWED PLAINTIFF a DUTY, DEFENDANT BREACHED this duty and this BREACH was BOTH the ACTUAL and PROXIMATE CAUSE of PLAINTIFF'S DAMAGES.

Neighbor owed Pet Farm a DUTY to act as a reasonably prudent keeper of an automobile because Pet Farm was a foreseeable Plaintiff; the facts indicate Pet Farm was across the street from Neighbor and PetFarm was therefore in the zone of danger created by Neighbor.

A reasonably prudent keeper of an automobile would ensure that the wheels were properly secured by blocks, especially when this automobile is located at the top of a steep driveway.

Here, the facts stipulate that Neighbor improperly secured the vehicle by blocks; therefore, Neighbor breached the duty owed to Pet Farm.

Neighbor's breach of not properly securing the wheels by the blocks was the ACTUAL cause of Pet Farm's damage because but for Neighbor not properly securing the jeep, the jeep wouldn't have rolled down the hill, through the fence & killed 22 rabbits.

Neighbor's breach of not properly securing the wheels by the blocks was the PROXIMATE CAUSE of Pet Farm's damages because their improperly securing the vehicle set into motion a chain of unbroken events which are directly linked to the damaged fence and killed 22 rabbits. There were NO independent or superseding acts which broke this chain of events. The only reason that the rabbits were killed was because the jeep ran over them after crashing through the fence, and the only reason that the jeep crashed through the fence was because the jeep rolled down the

Neighbor's driveway, and the only reason the jeep rolled down the neighbor's driveway was because the jeep jumped off its blocks, and the only reason the jeep jumped off its blocks was because Neighbor improperly secured it.

Therefore, Neighbor is liable to Plaintiff for negligence and owes Plaintiff actual damages of \$2,200 for the rabbits (\$100 x 22) plus the costs to repair the fence.

NEIGHBOR'S DEFENSES

SUPERSEDING ACT

Neighbor will argue that the blasting was an unforeseeable superseding act; however, this would fail because Neighbor was aware of the existence of Blast CO, since Neighbor owned property in Mountain Town since 1965, 5 years before BlastCo started business there in 1970. Since Neighbor was aware of this foreseeable blasting, Neighbor should have properly secured the jeep by blocks.

CONTRIBUTORY NEGLIGENCE

Neighbor will argue that PetFarm should have constructed a stronger more durable fence, and if they did, it would have prevented the rabbits from being killed and Plaintiff being damaged; however, this argument will fail for reasons addressed supra.

QUESTION 4

Curley, Larry and Moe were discussing plans to rob Bank. Moe and Larry agreed to do the robbery, but Curley said that he would think about it. Moe and Larry, however, asked Curley to at least drive them to the Bank in his car, and Curley agreed to do so.

On the planned day, the three drove to the Bank. Curley remained outside, sitting in the car waiting for his two friends. Once inside, Larry noticed that the armed Bank guard was approaching them. Larry pulled out his gun, fired at the guard but missed, while the bullet hit and killed a customer. Moe then shot the guard dead.

Outside, Curley decided to call the police on his cell phone and told them about the ongoing crime and drove away. Inside, Larry and Moe ordered Teller at gunpoint to give them a sack of money. Fleeing outside, but noticing that Curley had left, Larry and Moe dragged a driver out from a nearby car and drove away with the money. Moe, Larry and Curley were later captured by the police.

With what crimes should Moe, Larry, and Curley each be charged, and what defenses might each one raise? Discuss.

QUESTION 4: SELECTED ANSWER A

Crimes against Moe (M) Larry (L) and Curley (C)

Conspiracy

Conspiracy is an agreement made between two or more people to enter into an agreement with the intent to commit an unlawful objective or commit a crime, and in majority jurisdictions, an overt act in furtherance of the crime or objective is needed as well.

Here, M, L, and C entered into an agreement to rob a bank. M and L agreed to do the robbery, and C was unsure and was thinking about it. However, M and L asked C if he would drive them to the robbery, thus C has entered the conspiracy. There is an agreement between two or more people as three people are involved. Their agreement is to pursue an unlawful objective of committing a robbery. Lastly, there was an overt act as soon as they got in the car and began driving to the bank.

Therefore, M, L, and C will all be guilty of conspiracy to robbery in both majority and minority jurisdictions

Crimes against Larry and Moe

Larceny for money sack.

Larceny is the unlawful taking and carrying away of personal property of another with the specific intent to permanently deprive the owner of it.

Here, L and M ordered the teller to give them a sack of money from the bank in which I assume they took as they fled the bank right after. However, the facts do not directly say if they actually took the sack of money with them or not. Assuming that they did, then they took the personal property of the bank. As they were stealing from a bank M and L did have the specific intent to never return the money and permanently deprive the bank of the money.

Thus, L and M committed a larceny.

Larceny for stolen car

Larceny is defined above.

Here, M and L steal a vehicle from someone outside the bank in order to get away. They unlawfully took the vehicle (property) from the person, which satisfies the unlawful taking element; then they drove away which satisfies the taking and carrying away element; and it seemed as though they had no intent to return the vehicle to the owner as they had no idea who he was and they were trying to flee and get as far away as possible.

Therefore, M and L would be charged with Larceny of the car.

Robbery

Robbery is larceny (which is defined above) plus the threat of force or imminent apprehension of such force.

Here, assuming that M and L did take the money from the teller and they were charged with larceny, then all that needs to be proven is that M and L posed a threat. M and L entered the bank armed with guns, which automatically makes them a serious threat being armed with deadly weapons.

Therefore, M and L committed a robbery.

Merger

If M and L are guilty of larceny and robbery it will merge into just being charged with robbery with a deadly weapon.

Assault

Assault is an attempted battery or the creation of imminent apprehension of force or threat of force. Aggravated assault with a deadly weapon requires specific intent.

M and L both were armed with guns (deadly weapons), pulled them out, and aimed at the security guard and shot. This act alone of showing a gun in a bank is an assault to all customers, tellers, and all persons in the bank. M and L's actions have created an imminent apprehension of not just force or threat of force, but imminent apprehension of

possible death or severe bodily harm. Thus, there was imminent harm to others. M and L also had the specific intent by carrying two loaded guns and bringing them into a bank to rob it. Thus, they had the specific intent to assault anyone in the bank at that time.

Therefore, there M and L will be charged with assault.

Battery

A battery is the unlawful application of force with the intent to cause bodily harm/injury or an offensive or inappropriate touching.

Here, M and L are leaving the bank and do not have a ride because C left before they exited the bank. M and L stopped a car and dragged the driver out of his/her car and drove away in his/her vehicle. Dragging someone out of their car is an unlawful application of force. M and L had the intent to drag this person out of the car. There was bodily harm, as someone who is vigorously dragged out of their car will suffer some sort of harm in one way or another.

Therefore, M and L will be charged with a battery.

Solicitation

Solicitation is when one urges, incites, commands, or counsels another to commit a crime with the intent to commit that crime. As discussed above M, L, and C are all guilty of a conspiracy, but M and L were the ones who solicited him to join the conspiracy.

Here, M and L were discussing robbing a bank and C was not sure he wanted to get involved, but soon after M and L asked him again if he could at least drive them to the bank. In response C said yes and drove them to the bank which shows that M and L urged C to join in the commission of the robbery and join the conspiracy.

Crimes against Larry ONLY

Murder of Bank Customer

Murder

Murder is the killing of another human being.

Homicide

Homicide is the intentional or malicious killing of another human being.

Malicious

Malicious is defined as either: (1) the intentional killing of another human being, (2) the intent to cause severe bodily harm/injury, (3) depraved heart killing, (4) or a killing that occurs during the commission of an inherently dangerous felony.

Since L walked into the bank carrying a weapon (a gun) there is an intent to kill and an intent to cause severe bodily harm/injury, and in addition the killing occurred during the commission of an inherently dangerous felony, being robbery. Thus there is malicious intent by L.

Causation

For causation one must be the actual and proximate cause of the injury suffered by the plaintiff.

Actual Cause

Actual cause uses the "but for" test to see if the defendant's actions were the actual cause of the murder.

Here, but for the felony to rob a bank, the customer would not have been killed. This is the actual cause of the death of the customer.

Proximate Cause

Proximate cause is the philosophical connection between the defendant's conduct and the plaintiff's injury and there is no break in the chain of causation.

Murder in the First-Degree

Murder in the first degree requires premeditation and deliberation of the killing of another. Premeditation is where the defendant has a moment to reflect on the killing. Deliberation is where the defendant planned the killing and acted in a calculated manner as to the killing. Or if there is a murder that occurs during an inherently dangerous felony (robbery) then that will allow for the charge of first-degree murder.

Felony Murder

A felony murder requires there to be a killing that occurs during the commission of an inherently dangerous felony. Here, robbery would constitute as an inherently dangerous felony.

Here, L was in the midst of robbing the bank when the security officer approached him and he then shot and missed the security guard but the bullet struck a customer of the bank and was killed. Regardless of L's intent to shoot the security guard or not does not matter within a felony murder. If there is a killing during the commission of the robbery then L will be charged with felony murder in the first degree.

Therefore, L will be charged with felony murder in the first degree.

Attempted Murder on Security Guard

Attempt requires that there be a substantial step taken towards the commission of the targeted crime or offense.

Here, L saw the security guard begin to approach him and M, so L pulled his gun out and shot, intending for the bullet to hit the security guard, but it did not and rather struck a customer (explained above). However, there is still an attempted murder on the security guard. In addition, if the felony murder charge for some reason fell through, the intent to kill the security guard would be transferred to the customer who was actually killed by L's bullet. This would still make L liable for some sort of murder charge on the customer.

Therefore, prior to M killing the security guard, L would have been charged with attempted murder on the security guard.

Crime against Moe ONLY

Murder of Security Guard

Murder defined above

Homicide defined above

Malice defined above

Felony Murder defined above

Here, after L shot and missed the security guard, M took his gun out and shot the security guard and killed him.

Therefore, M will also be charged with felony murder in the first degree.

Defenses for Moe and Larry

No Defenses for Moe and no defenses for Larry.

Crimes against Curley ONLY

Accomplice Liability/Co-Conspirator

An accomplice is one who aids or abets in the commission of a crime with the intent to commit the crime. Accomplices will be responsible for all crimes committed and the foreseeable consequences of those crimes.

C will be an accomplice to all the crimes committed by L and M even those that happened after the robbery because they are foreseeable consequences that occurred after. In addition to being an accomplice, he is also a co-conspirator which makes him guilty of all charges that M and L were convicted of in furtherance of the conspiracy.

Therefore, C will be charged as an accomplice/co-conspirator to robbery, battery, assault, and murder.

Aiding and Abetting

Aiding and abetting is someone who helps either in the commission of the crime (aiding) or someone who helps after the commission of the crime.

Here, C would be charged with both being an aider and abettor because he helped aid in the robbery by driving them to the bank and he was their driver for leaving the bank as the get-away car.

Therefore, C would be an aider and abettor to robbery.

Defenses for Curly

Withdrawal from Conspiracy

For an effective withdrawal from a conspiracy one must give adequate notice to all members of the conspiracy that he/she will be withdrawing from the conspiracy, and sufficient time of notice of withdrawal prior to the commission of the conspiracy. However, even an effective withdrawal will not serve as a defense to liability to the conspiracy.

Here, C thought about withdrawing when he said he was thinking about it as M and L were planning the robbery, but then officially joined the conspiracy when he decided to drive them to the bank. Then as he was waiting in the car for M and L to come out he decided to leave them to themselves as he drove away from the bank. This would not be an effective withdrawal from the conspiracy as the crime already occurred, and also there was no notice given to the other members of the conspiracy.

Therefore, there would no effective withdrawal and he would be charged with all crimes the conspiracy committed; also he will be charged with crimes he was an accomplice to. All foreseeable consequences from the crimes committed will also leave C at fault and he will be charged with those as well.

Therefore, C never had an effective withdrawal from being an accomplice nor conspirator; thus, he cannot use this defense.

QUESTION 4: SELECTED ANSWER B

CRIMES OF MOE

Conspiracy to commit robbery

An agreement between two or more individuals to commit an unlawful act or lawful. An overt act is required in most jurisdictions.

Curley, Larry, and Moe discussed plans to rob a bank. Moe and Larry agreed to do the robbery, which is a crime. Further, on the planned day, Curley, Larry, and Moe "drove to the Bank," which was an overt act in furtherance of the conspiracy to commit robbery.

Moe will be charged with conspiracy.

Pinkerton's Rule

Under Pinkerton's rule, the foreseeable crimes of a conspiracy will be attributable to all co-conspirators.

In this case, Larry and Moe, having conspired to rob a bank together will be liable for all crimes foreseeable as a result of the conspiracy.

Robbery (Aggravated)

The trespassory taking and carrying away of the personal property of another through force, fear, threat, with the intent to permanently deprive. The crime is aggravated when a dangerous weapon is used, such as, in this case, a gun.

Moe and Larry had entered the bank with the intent to rob the bank. Therefore entry was trespassory. The bank's money was not their money, therefore property of another. Larry had brought a gun to the robbery. Therefore this was an aggravated robbery. Further, when Moe and Larry ordered the teller at gunpoint to give them a sack of money, this was by use of force by pointing the gun at the teller. Since Larceny is a component elemental crime of robbery, there will only be a charge for robbery.

Moe will be charged with Robbery.

Battery

Of Driver

The unlawful application of force without consent or privilege.

Moe and Larry dragged a driver out from a nearby car and drove away with the money. Moe and Larry did not have authority to do so. Further, the driver was likely injured as a result of being dragged.

Moe will be charged with battery of the driver.

Assault

Of Bank Teller

The creation of a reasonable apprehension of an imminent bodily harm.

Moe and Larry pointed a gun at a teller and demanded the money sack. It is reasonable that the teller would be apprehensive of a gun pointed at them, as a gun is a dangerous weapon and can cause imminent bodily harm or death.

Moe will be charged with assault of the bank teller.

Of Driver

Moe and Larry dragged the driver from his vehicle. If the driver was aware that 2 men, likely holding a gun were coming in the driver's direction, he may have been apprehensive of the threat that that Moe and Larry would seriously injure him.

Moe will be charged with assault of the bank teller.

Kidnapping

Of Driver

The asportation of another against their will from place to place.

Moe and Larry dragged a driver out from a nearby car and drove away with the money. Moe and Larry did not have authority to do so. Further, the driver did not provide any willful consent of being dragged from his car.

Moe will be charged with kidnapping.

Homicide

The killing of one human being by another.

Here, Moe shot and killed a bank guard, a human being.

There was a homicide.

Actual Cause

But for Moe shooting the gun, bank guard would not have died when and in the manner that she did.

Moe is the actual cause of Bank Guard's death.

Proximate Cause

It is not unforeseeable that when a person shoots a gun, aiming at one person, and hitting another, that the person shot would suffer serious bodily injury and die.

Moe is the proximate cause of Bank Guard's death.

Murder

The killing of another with malice aforethought.

Malice Aforethought

Malice is shown through any of the following 1) Intent to kill 2) Intent to cause serious bodily harm 3) Depraved heart - wanton and reckless indifference to the value of human

life. 4) felony murder rule.

1) Intent to kill: Moe shot at the security guard intending the bullet hit the guard and kill him. The fact that the bullet actually struck and killed bank guard shows clear intent to kill.

2) Intent to cause serious bodily harm: At a minimum, when Moe fired the gun, he intended to cause serious bodily injury to another.

3) Depraved Heart: Firing a gun in a bank, with many customers around, during the day, shows indifference to the value of human life because it is likely that someone will be hurt or killed.

Felony Murder Rule

Under the 4th item, Felony murder rule, one who kills another during perpetration of an inherently dangerous felon will be guilty of murder through application of the felony murder rule.

Moe was in the res gestae of robbing a bank with a loaded gun which is an inherently dangerous crime.

Moe will be charged with felony murder.

First Degree Murder

A premeditated and deliberate killing of another, through surprise, ambush, bomb, torture, lying in wait.

Even if felony murder did not apply, Moe planned to shoot at the security guard, took intentional aim, and pulled the trigger. Moe acted with malice.

Moe will be charged with first degree murder.

Second Degree Murder

All murders not 1st degree.

As above, there does not appear to be any facts to support a 2nd degree murder conviction because Moe will be charged with first degree murder.

Voluntary Manslaughter

A killing that is mitigated through such actions as heat of passion or imperfect self-defense.

There are no facts to indicate that Moe was reasonably provoked to kill. Moe was committing a crime and attempting to shoot at a bank guard.

Moe will have no case to mitigate to voluntary manslaughter.

Defenses

Moe may contend that he should not be charged with murder of customer, attempted murder of the bank guard, or any additional crimes performed solely by Larry. However, this argument will fail as Moe will be charged under Pinkerton's rule as these crimes were foreseeable crimes of the conspiracy. Further, Moe may claim that he should not be charged with kidnapping either, as this was not a foreseeable crime of the conspiracy, however, when the getaway driver (Curley) is nowhere to be found, it is foreseeable that criminals committing a robbery would need some method of escape, such as kidnapping (carjacking) a person to obtain a getaway vehicle, as in this case. Moe's defenses will fail.

CRIMES OF LARRY

Conspiracy to commit robbery

An agreement between two or more individuals to commit an unlawful act or lawful. An overt act is required in most jurisdictions.

Curley, Larry, and Moe discussed plans to rob a bank. Moe and Larry agreed to do the robbery, which is a crime. Further, on the planned day, Curley, Larry, and Moe "drove to the Bank," which was an overt act in furtherance of the conspiracy to commit robbery. Larry will be charged with conspiracy.

Pinkerton's Rule

Under Pinkerton's rule, the foreseeable crimes of a conspiracy will be attributable to co-conspirators.

In this case, Larry and Moe, having conspired with C to commit a battery of C, will be liable for all crimes foreseeable as a result of the conspiracy.

Robbery (Aggravated)

Defined and discusses supra.

Larry will be charged with aggravated robbery under Pinkerton's Rule.

Homicide

The killing of one human being by another.

Here, Larry shot and killed a customer, a human being.

There was a homicide.

Actual Cause

But for Larry shooting the gun, customer would not have died when and in the manner that she did.

Larry is the actual cause of Customer's death.

Proximate Cause

It is not unforeseeable that when a person shoots a gun, aiming at one person, and hitting another, that the person shot would suffer serious bodily injury and die.

Larry is the proximate cause of C's death.

Murder

The killing of another with malice aforethought.

Malice Aforethought

Malice is shown through any of the following 1) Intent to kill 2) Intent to cause serious bodily harm 3) Depraved heart - wanton and reckless indifference to the value of human life. 4) felony murder rule.

1) Intent to kill: Larry shot at the security guard intending the bullet hit the guard and kill him. The fact that the bullet actually struck and killed customer will not avoid the fact that Larry had intent to kill.

2) Intent to cause serious bodily harm: At a minimum, when Larry fired the gun, he intended to cause serious bodily injury to another.

3) Depraved Heart: Firing a gun in a bank, with many customers around, during the day, shows indifference to the value of human life because it is likely that someone will be hurt or killed.

Felony Murder Rule

Under the 4th item, Felony murder rule, one who kills another during perpetration of an inherently dangerous felon will be guilty of murder through application of the felony murder rule.

Larry was in the res gestae of robbing a bank with a loaded gun which is an inherently dangerous crime.

Larry will be charged with felony murder.

Transferred Intent

Under criminal law, the intent to kill one person, whereby the perpetrator actually kills another is considered to transfer the intent to kill to the victim.

Here, the customer was actually killed, not the security guard that Larry intended but the intent to kill will transfer.

First Degree Murder

A premeditated and deliberate killing of another, through surprise, ambush, bomb, torture, lying in wait.

Even if felony murder did not apply, Larry planned to shoot at the security guard, took aim, and pulled the trigger. Even though Larry actually killed the customer, as discussed supra, he acted with malice.

Larry will be charged with first degree murder.

Second Degree Murder

All murders not 1st degree.

As above, there does not appear to be any facts to support a 2nd degree murder conviction because Larry will be charged with first degree murder.

Voluntary Manslaughter

A killing that is mitigated through such actions as heat of passion or imperfect self-defense.

There are no facts to indicate that Larry was reasonably provoked to kill. Larry was committing a crime and attempting to shoot at a police officer.

Larry will have no case to mitigate to voluntary manslaughter.

Attempted Murder

An action in which a person has the specific intent to kill a person, where it is legally and factually possible to kill, and where the person had the apparent ability to do so, and steps into the zone of perpetration, may be guilty of an attempt. Murder, defined above.

Larry pulled out his gun, intended to shoot at the bank guard but missed. It was possible that the bullet could have hit and killed the guard. Further, Larry had the apparent ability to kill the guard. In fact, he even took a shot at the guard.

Larry will be charged with attempted murder.

DEFENSES

Larry will have no valid defenses.

CRIMES OF CURLEY

Accomplice Liability

One who acts with knowledge of a crime, intending that the crime be committed, and actively assists in the perpetration of the crime will be viewed under the common law as either an accessory before the fact, accomplice, or accessory after the fact. Modernly, the person is termed an "accomplice." An accomplice is liable for all intended crimes.

Here, Curley showed doubts of agreeing to the conspiracy to commit robbery (infra). However, when Larry and Moe asked Curley to drive them away from the bank, in his car, Curley agreed to do so. Curley was definitely aware and had knowledge of the crime because he was discussing the plans with Moe and Larry. Curley intended that the crime be committed because he provided his car for the escape. Further, Curley actively assisted when he sat outside waiting for his two friends who were inside committing the robbery.

Curley will be charged as an accomplice.

DEFENSES

Withdrawal

Under common law, withdrawal was not valid. Modernly, in some jurisdictions, withdrawal may be effective when the person seasonably and timely notifies all co-conspirators of their intent to withdraw. Some jurisdictions even go so far as to require the person withdrawing to make an effort to thwart the crime, such as by notifying the police.

Here, Curley did not agree to the conspiracy, but he was an accomplice. Curley will present evidence that he did act prepared as the getaway driver, but that he successfully withdrew from the crime when he "called the police" and "told them about the ongoing crime." Moreover, Curley drove away, leaving his friends behind at the bank, which Curley will argue shows that he both communicated to the police and reported the crime that was occurring, as well as drove away, thereby thwarting the crime and the escape of Moe and Larry from the crime scene. Curley's defense may limit his liability for crimes that occurred after the robbery, but he will still be liable for all crimes that occurred before withdrawal.

Curley's withdrawal defense may limit his exposure to future crimes after withdrawal.