



California First-Year Law Students' Examination

**Essay Questions
and
Selected Answers**

October 2021



The State Bar *of California*

OFFICE OF ADMISSIONS
COMMITTEE OF BAR EXAMINERS

ESSAY QUESTIONS AND SELECTED ANSWERS

OCTOBER 2021

CALIFORNIA FIRST-YEAR LAW STUDENTS' EXAMINATION

This publication contains the four essay questions from the October 2021 California First-Year Law Students' Examination and two selected answers for each question.

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

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

October 2021

ESSAY QUESTION 1 OF 4

Answer All 4 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

Dave suggested to Fred that they rob a bank. Fred agreed and said that he would go along with Dave when he tries to rob the bank. Unbeknownst to Dave, Fred did not actually want to rob the bank. Rather, he was a member of a terrorist group who wanted to explode a hand grenade in a public place as an act of terror. When Dave asked him to participate in the bank robbery, Fred saw an opportunity to fulfill his goal while having Dave along as an unwitting armed backup.

The next day, Dave and Fred approached the bank carrying handguns. Fred also had a hand grenade in his jacket pocket that Dave did not know about. Just as they walked in the bank's front door with their guns drawn, to Dave's astonishment, Fred removed the grenade from his pocket, pulled the pin, and threw the grenade into the bank. The explosion damaged the bank, but did not hurt anyone. Bank guard Gus saw Dave and Fred running away with their guns drawn and shot his gun at Fred, killing him.

With what crimes may Dave reasonably be charged? Discuss.

QUESTION 1: SELECTED ANSWER A

State v. Dave

Solicitation: Requesting, urging, or tempting someone to commit a crime, with the intent that the solicitee commit the crime. Here, the facts state that "Dave suggested to Fred that they rob a bank." Thus, Dave urged Fred to commit a crime, with the **specific intent** that Fred commit the crime. Therefore, Dave can be found guilty of Solicitation. However, Solicitation merges into the completed crime.

Conspiracy: Agreement by two or more persons to commit a crime, with the intent that the crime be committed. Here, "Fred agreed and said that he would go along with Dave when he tries to rob the bank." At Common Law, Conspiracy was complete upon the agreement of the co-conspirator. However, modernly, Conspiracy is a felony and requires some **overt act** in furtherance of the criminal objective. Here, Dave and Fred approached the bank carrying handguns. Thus, they both committed an overt act in furtherance of the criminal objective, at this point. Additionally, Dave had the **specific intent** to complete the criminal objective. Therefore, Dave can reasonably be charged with Conspiracy.

Feigned Agreement: When only one guilty mind, there can be no Conspiracy. Here, the facts state that "Unbeknownst to Dave, Fred did not actually want to rob the bank." Thus, it would seem that there was only one guilty mind. However, as Fred intended to "explode a hand grenade in a public place," Fred had the requisite guilty mind.

Pinkerton Rule: Each co-conspirator is held liable for all crimes that were in

furtherance of the criminal objective, and all that were foreseeable. Here, the facts state that Dave did not know that Fred had a grenade, and that Dave was "astonished" when Fred removed the grenade from his pocket. However, the use of force by use of a deadly weapon (here, grenade) is foreseeable, as even Dave had a gun drawn. Thus, Fred's acts in relation to the grenade are *foreseeable*. Therefore, Dave will be guilty of crimes related to Fred's use of the grenade.

Malicious Mischief: Damage or destruction of the personal property of another with malice. Here, the "*explosion damaged the bank, but did not hurt anyone.*" Thus, there was damage to the personal property of another (bank owner). Furthermore, Malice can be shown by having the specific intent to commit the crime, or a reckless disregard of an obvious risk. Here, Fred had a **specific intent** to carry out the "*act of terror.*" Thus, Dave can be reasonably charged with Malicious Mischief, through the vicarious liability imposed on him through the *Pinkerton Rule*.

Attempted Robbery: A substantial step toward the commission of a *Robbery* with the intent to commit the *Robbery*. Here, Dave had his gun drawn, entered into the bank, and had the **specific intent** to commit a Robbery, as the facts state that "*Dave suggested to Fred that they rob a bank.*" Thus, Dave and Fred came **dangerously close** to the commission of a Robbery. Therefore, Dave can be reasonably charged with *Attempted Robbery*.

Robbery: Trespassory taking and carrying away of the personal property of another from the person or their presence, by use of force or threats of force, with the intent to permanently deprive. Here, as the facts do not state that Dave actually took **control and dominion** of any personal property from the bank, nor satisfied the element of **asportation**, he cannot be found guilty of Robbery.

Larceny: Trespassory taking and carrying away of the personal property of another with the intent to permanently deprive or steal. Here, similarly, Dave cannot be found guilty of Larceny.

Aggravated Assault: Assault with a deadly weapon. Assault is intentionally causing a reasonable apprehension of receiving an immediate battery. Here, Dave and Fred were using guns, and a grenade (**deadly weapons**). Additionally, they **intentionally caused** Gus to reasonably apprehend that he would receive an immediate battery, as there was an **apparent ability** to carry out the battery by use of gun or explosive. Therefore, Dave can be reasonably charged with committing an *Aggravated Assault*.

Burglary: Trespassory breaking and entering into the dwelling house of another, in the nighttime, with the intent to commit a felony therein. Here, Fred and Dave entered into the bank, with the **specific intent** to rob the bank. However, a bank is not a dwelling house. Furthermore, the facts state that Fred and Dave entered the bank "*The next day.*" Therefore, Dave cannot be charged for Common Law Burglary.

Statutory Burglary: Entry into any structure with the intent to commit a crime therein. Here, Fred and Dave **entered** as the facts state that they "*walked in the bank's front door.*" The bank is a structure. Finally, they had the **specific intent** to commit a robbery therein (a crime). Therefore, Dave can reasonably be charged with Modern Burglary, but not Common Law Burglary.

Murder: A homicide with malice aforethought.

Homicide: The killing of one human being by another. The defendant's act must have been the actual and proximate cause of the victim's death.

Killing of One Human Being: No particular means are required. Here, Fred, a **human being** was killed.

Actual Cause: The defendant will be the actual cause of the victim's death if they would not have died but for the defendant's act. Otherwise, if there are multiple sufficient causes, the defendant will be the actual cause of the victim's death if their actions were a Substantial factor in bringing about the victim's death. Here, Fred would not have died, but for the *bank guard, Gus, shooting his gun at Fred, killing him.*" However, as Dave was an accomplice to the crime, he is a **Substantial Factor** in bringing about Fred's death, and will be found to be the actual cause.

Year and a Day Rule: Under the Common Law, the victim must die within one year and one day from the date of the incident. Here, Fred died instantly. Thus, this element is satisfied.

Proximate Cause: The defendant will be the indirect proximate cause of the victim's death if there was an intervening act by a third party or act of God, and the intervening act was foreseeable. Here, the bank guard, Gus, made an effort to protect persons and property of the bank. Efforts to protect persons or property are considered **foreseeable**. Thus, the intervening act of Gus was foreseeable. Therefore, Dave's act of burglary is the indirect *Proximate* cause of Fred's death.

Therefore, Dave is criminally liable for the homicide of Fred.

Malice: Malice can be established by one of the following:

Intent to Kill: Here, the facts do not show that Dave had the **specific intent** to kill Fred, nor knowledge of **substantial certainty** that Dave's death would occur. Thus, Malice will not be shown this way.

Intent to Cause Serious Bodily Injury: Here, the facts do not show that Dave had the specific intent to cause Fred any serious bodily injury, as Dave and Fred were running away together. Thus, Malice will not be shown this way.

Wanton Conduct: Showing an extreme indifference to the value of human life by an act that poses a very high risk of death, has little or no social value, done intentionally, where the defendant was aware of the risk. Here, Dave's conduct of *Attempted Robbery* with use of a gun (deadly weapon) constituted an act that posed a **very high risk of death**, and which had **little or no social value**, which was also done **intentionally**, and where Dave was aware of the risk that his actions posed. Thus, Dave can be found to have committed Wanton Conduct.

However, if the courts do not find that Dave's conduct amounted to Wanton Conduct, the next best theory is *Involuntary Manslaughter*.

Felony Murder Rule: When a death is caused during the perpetration of an inherently dangerous, collateral felony, then the underlying felony will replace and satisfy the element of *Malice*. Here, Dave was engaged in the act of *Attempted Robbery* with a deadly weapon. Thus, his act was inherently dangerous, as it posed a high risk of death. Additionally, the crime of *Robbery* is collateral and independent to the act which actually brought about the homicide of Fred. Thus, the *Attempted Robbery* by Dave will replace and satisfy the element of *Malice*.

Res Gestae: The death must occur *during the perpetration* of the felony, for the defendant to be found guilty. The *Res Gestae* begins when the attempt of the felony becomes viable and lasts until the felon(s) reach a place of temporary or seeming

safety. Here, Dave was in the bank with a gun. Thus, the attempt to rob became viable. Further, the facts state that "*Dave and Fred were running away with their guns drawn.*" Thus, they did not reach a place of temporary or seeming safety, as they were still fleeing when Fred was shot by Gus. Thus, the death occurred during the *Res Gestae*.

Red-line View: Under the Common Law, when a co-felon dies at the hands of another, the defendant will be found guilty of Felony Murder. However, under the modern *Red-line View*, a defendant will not be held guilty of Felony Murder when a co-felon dies at the hands of an innocent third party. Here, Gus is an innocent third party, who actually shot and killed Fred, the co-felon. Thus, if the jurisdiction follows the *Redline View*, then Dave will Not be found guilty of Felony murder. However, under Common Law, Dave will be found guilty of Felony Murder.

First Degree Felony Murder: When a death occurs during the perpetration of an **enumerated** felony. Traditionally, *Burglary* and *Robbery* are both considered **enumerated** felonies. Thus, if Dave is found guilty of Felony Murder (established above), he can also be reasonably found guilty of *First- Degree Felony Murder*.

Involuntary Manslaughter: Homicide without malice while committing a wrongful act. Here, if Dave is not found guilty of Felony Murder, and his conduct is not found to amount to Wanton Conduct, then the next best theory is Involuntary Manslaughter. Dave is liable for the homicide of Fred (established above). If malice cannot be found, then Dave's **wrongful act** of Assault will suffice. Therefore, Dave can be reasonably charged with Involuntary Manslaughter.

Therefore, Dave can be reasonably charged with committing Solicitation, Conspiracy,

*Attempted Robbery, Statutory Burglary, Malicious Mischief, Aggravated Assault,
Second Degree Felony Murder or First- Degree Felony Murder, or Involuntary
Manslaughter.*

QUESTION 1: SELECTED ANSWER B

1. STATE V. DAVE

SOLICITATION

Solicitation is an inchoate crime where one party induces or entices another to commit a crime with the specific intent that the crime be carried out. The crime of solicitation is complete once asked. No overt act is necessary for the crime of solicitation to be completed.

Here, Dave suggests or asks Fred if they could go rob a bank together. The asking from Dave to Fred is the inducing of him to complete the specific intent crime of solicitation and regardless of his answer. Therefore, Dave would be charged with the crime of solicitation.

MERGER

The crimes of solicitation of conspiracy merge into the greater of the two crimes of solicitation and conspiracy. See analysis below for conspiracy but if charged with conspiracy the charge of solicitation will merge into the conspiracy crime.

CONSPIRACY

Conspiracy is the inchoate crime where there is an agreement between two or more people to commit a crime with the specific intent that the crime be carried out. In most jurisdictions an overt act is needed. Under the common law or the bilateral approach there must be two guilty minds in order for the crime of conspiracy to be completed. Under the MPC rule (model penal code) or the unilateral approach, there needs to be

only one guilty mind in order for the crime of conspiracy to be completed. Under the common law the crime of conspiracy cannot be withdrawn. Under the MPC, however, if the crime is thwarted it can be a withdrawn defense.

Here, Fred agreed and that he would go along with Dave when he tried to rob the bank. When the facts state that Fred agreed to go along with Dave to commit the robbery crime, this is the agreement. Although Fred did not have the intent to rob the bank, he had the intent to explode a grenade at the bank and wanted to place an act of terror in public. So, the intent to rob the bank on Fred's behalf is missing; however, if the unilateral approach to conspiracy was used than Dave would still be liable for the conspiracy because Dave was the one who had the specific intent that the crime of robbery be carried out. Dave had the intent to commit the crime of robbery.

Dave would be charged with conspiracy.

CONSPIRACY LIABILITY OR PINKERTON'S LIABILITY

Under Pinkerton's rule, all co -conspirators are liable for all foreseeable crimes in furtherance of the conspiracy. Any withdrawal from the conspiracy will limit the subsequent crimes. Here, since Dave and Fred have entered into a conspiracy together Dave and Fred will both be liable for the subsequent crimes of the conspiracy to rob the bank if they are foreseeable crimes in furtherance of the crime of robbery.

Here, Dave had no idea that Fred was a part of a terrorist group and that he wanted to not really rob the bank but instead bring a grenade to explode it as an act of terror at the bank. This really is not a foreseeable crime to a robbery. Dave had no knowledge that Fred would bring a grenade and have that grenade explode in the middle of trying to rob a bank.

Therefore, Dave would not be liable for the crime of exploding the grenade at the bank.

ROBBERY

Robbery is the trespassory taking and carrying away of the property of another with the intent to permanently deprive them thereof with the use of force.

Here, Dave had the intent when he planned and decided he wanted to rob a bank, he knew that he wanted to go in and take money from the bank. The trespassory taking and carrying away elements are met when he planned to go up to the bank teller with handguns and ask for the money. He would have gotten the money and carried that away with the intent to keep the money and permanently deprive the bank of that money. Dave also brought in a handgun, so he had force that he was using to scare the teller into giving him the money. When Dave walked into the bank with handguns and walked through their front door with the guns, this is the element of force that is proven since Dave had guns ready to use force against the teller. This satisfies each element of robbery. Although Dave had the intent that the above robbery be carried out, he was unable to complete the crime due to the interference of Fred exploding the grenade.

Therefore, the crime was not completed, and Dave would not be charged with robbery but instead attempted robbery. See below for attempted robbery.

ATTEMPTED ROBBERY

ATTEMPT

Attempt is an inchoate crime that is done with intention with committing the crime. One needs to have the 1) intent to commit the crime 2) take a substantial step towards completing the crime but falls short of that completion. Mere preparation is not enough.

Here, Dave had the intent that the crime of robbery be committed and all of the

elements of robbery which are listed above. Dave would have absolutely completed the crime of robbery had Fred not used the grenade to explode it as an act of terror and then the bank guard getting involved to stop them. Dave had the intent to commit the crime of the robbery and he took substantial steps when he brought the handguns and drove to the bank with the handguns and approached the bank. The crime falls short when Fred instead pulls the grenade from his pocket and pulls the pin and throws that into the bank. Fred's actions stopped Dave from asking the teller for the money and actually taking the money and carrying away. This proves that Dave took substantial steps towards robbing the bank. Driving to the bank, walking through the front doors with handguns is definitely a substantial step with the intent that the crime of robbery be completed.

Therefore, Dave would be charged with attempted robbery.

HOMICIDE

Homicide is the unlawful killing of another human being.

CAUSATION

Causation comes in two forms. Actual and proximate cause. The defendant must prove that their actions were both the actual and proximate cause of the death.

ACTUAL CAUSE

In order to be guilty, the cause of the death must be the actual cause. Actual cause is said to exist, but for the act, the death would not have occurred.

Here, had it not been but for Dave wanting to rob a bank and actually taking the substantial steps and going to the bank with handguns to rob it and bring Fred who unbeknownst to him, bringing a grenade, the death of Fred would not have occurred.

Dave is the actual cause of Fred's death.

PROXIMATE CAUSE

In addition to being the actual cause, the defendants' actions must also be the proximate cause. Proximate cause is determined by a foreseeability test.

Here, it is foreseeable that if Dave and his co-conspirator Fred walk into a bank with handguns drawn then a guard at the bank will defend the customers and employees of the bank and shoot at them possibly killing them. It is foreseeable that someone could die during the commission of a bank robbery.

Therefore, Dave is the proximate cause of Fred's death.

Dave is the actual and proximate cause of Fred's death

COMMON LAW MURDER

Common law murder is the killing of another human being with malice aforethought.

MALICE AFORETHOUGHT

Malice aforethought is determined by four elements. 1. intent to kill 2. intent to inflict great bodily harm 3. reckless indifference to a great risk to human life or also known as depraved heart murder 4. felony murder.

INTENT TO KILL

Intent to kill is when one has the specific intent to kill another human being

Here, Dave did not have the intent to kill anyone, but to simply rob a bank.

INTENT TO INFILCT GREAT BODILY HARM

Intent to inflict great bodily harm is when one had the specific intent to greatly harm someone and this great bodily injury ends up killing them.

Here Dave did not have the intent to harm anyone so greatly that it would kill them

RECKLESS INDIFFERENCE TO A GREAT RISK TO HUMAN LIFE OR DEPRAVED HEART MURDER

Depraved heart murder is when one acts so recklessly that it causes their death.

Here, Dave did not act with extreme recklessness causing Fred's death.

FELONY MURDER

Felony murder is when a death results during the commission of an inherently dangerous felony. Robbery is an inherently dangerous felony.

Here, the death of Fred resulted during the commission of this felony. Fred was shot and killed when Dave and Fred walking through the front door of the bank with guns drawn. This would alarm any guard and of course they would take action to protect everyone inside of the bank. Not only did Fred have his handgun along with Dave but he pulled out a grenade from his pocket and pulled the pin. Once that went off, although it did not hurt anyone, the bank guard, Gus, saw Dave and Fred run away with their guns and shot Fred killing him. This death is a foreseeable death in relation to the felony that is taking place of robbing the bank.

Therefore, Dave will be charged with the felony murder or Fred.

REDLINE VIEW-

The redline view is when a co-felon is killed by police or a victim and the defendant is not guilty for the death of the co-felon because it would be seen as a justifiable homicide.

Here, Dave will have the defense of the redline view and will not be found guilty of the crime of the felony murder of Fred due to the bank guard killing Fred which would be classified as a justifiable homicide. Since the victim or police, which was the guard Gus believed was necessary to stop the felons and protect his bank seeing them running with guns allowed him to stop them and justifiably kill Fred.

Therefore, Dave will not be found guilty for the death of Fred under the redline view.

CONCLUSION

Dave will be charged with conspiracy under the and attempted robbery of the bank.

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ESSAY QUESTION 2 OF 4

Answer All 4 Questions



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Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the 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.

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

QUESTION 2

Sam is the owner of the Marvelous Motors car dealership, where he sells cars manufactured by XYZ Automotive Company. Bret went to Marvelous Motors and told Sam that he wanted to buy a Model Snazzy XYZ car that was any color other than red. Sam told Bret the car would be ready on Friday, January 31.

When Bret arrived to pick up the car, he discovered that it was bright red. Bret refused to accept the car, explaining that he believed drivers of red cars got more speeding tickets because the color caught the eye of Highway Patrol officers. Sam told Bret his concern was unfounded. Sam offered to let Bret try out the car for three months with Sam's guarantee that Bret would not incur any speeding-related costs because of the car's color. Bret then signed, without reading it, a document that Sam said was a temporary use license. The document was actually a contract between Sam and XYZ Automotive Company as the sellers, and Bret as the buyer, to buy the car for \$20,000. The contract stated, in the same size font as the rest of the printing in the contract: "XYZ Automotive Company disclaims any and all warranties, express or implied."

In February, Bret got three speeding tickets. Each time, the Highway Patrol officers told Bret that the bright red color of his car had caught their eye and that they otherwise would not have seen him speeding. Bret had to pay a total of \$1,700 in fines for the speeding tickets. Bret decided to return the car. Before he could do so, Bret had to pay \$1,000 to have the car's faulty transmission repaired. Sam refused to accept the car back.

1. What claims, if any, may Bret make against Sam and what damages could he recover? Discuss.
2. What claims, if any, may Bret make against XYZ Automotive Company? Discuss

QUESTION 2: SELECTED ANSWER A

Governing Law

Common law governs for service contracts and the UCC governs for the sale of goods.

This contract will be governed by UCC since a car is a good.

Offer

An offer is the manifest asset to enter into a contract. Under UCC the only required term is the quantity.

Here, an offer is made when Sam told Bret he wants a car. Here the quantity is one, as it is one car.

Thus, there is offer.

Acceptance

Acceptance is an assent to the terms of the contract.

Here, Sam assented to the contract when he told same that the car will be ready by Friday, January 31.

Consideration

Is the bargained for legal exchange.

Here, Bret pays Sam \$ 20,000 and Sam delivers him a vehicle.

Therefore, there is valid consideration.

Statute of Frauds

A contract can be enforced under the Statute of Frauds if it is a sale of goods for \$500 or more, K in consideration of marriage, surety, sale of land, K that cannot be performed in a year or executor paying the estate debts.

Here, the K is for a sale of goods for over \$500 (20k) It is signed and in writing.

Thus, it is valid under the Statute of Fraud

Implied Warranty of Merchantability

Where the party is a merchant, someone who regular deals in goods of the kinds, there is an implied warranty of merchantability that goods will fit their ordinary purpose.

Here, the ordinary purpose of the car would presumably be to be safely driven. Thus, it is not

Implied Warranty of Buyers Purpose

When the seller is a merchant and knows the buyer has a certain purpose when using the product.

Here, Sam told Bret he did not want a red car because he believed that it would cause him to get more speeding tickets.

Disclaimer of Warranties?

Warranties can be disclaimed if they are in a conspicuous writing (i.e., in different font, bigger writing, must be clearly differentiated from the rest of the contract. Warranties also may not be disclaimed if doing so would be unconscionable.

Here, the warranties were in the same font size as the rest of the contract.

Thus, the warranties cannot be disclaimed.

Express Warranties

Express warranties are made when a seller expressly states something.

Here, Sam told Bret that his concern of the car getting more speeding tickets was unfounded. Sam ended up getting 3 speeding tickets because of the color of the car.

Thus, the express warranty was violated.

Parol Evidence Rule

The parol evidence rule seeks to bar prior oral or written contemporaneous terms.

partial integration: complete but not final expression of parties' agreement

full integration: complete and final expression of parties' agreement.

Statements that are not consistent with the terms of the agreement are generally not allowed to be admitted.

However, statements that are not consistent can be admitted if they can show a defense to contract formation, condition precedent, collateral contract, mistake in integration.

Here Bret will seek to admit evidence to show a defense to contract formation since there was fraud when the contract was formed. Sam told him that he was not signing a contract but instead a license to drive the car for three months.

Fraudulent Misrepresentation

Fraudulent Misrepresentation can be shown when a party lies about or hides a material fact of the contract. Fraud can also be shown when a party tells another party what they are signing is actually not a contract.

Here, Sam told Bret that he was not actually signing a contract but was signing a temporary use license. He did this to induce Bret to agree, and Bret justifiably relied on his promise.

Thus, the K may be terminated because of fraud in inducement.

Already Accepted the Goods, he cannot reject the goods unless:

After a buyer Nonconformity substantially impairs the value of the goods

Relied on the assurances of the seller that there would be no nonconformity or that it would be cured.

Notified Seller of nonconformity Rx time after discovering

Here, Buyer could not discover the nonconformity before driving the car. The nonconformity caused significant impairment in value to him (getting speeding tickets)

The seller gave him assurances via express warranty about the warranty.

The seller will try to argue that the buyer did not notify him after a reasonable time of discovery. However, Bret got 3 speeding tickets in February.

He needed enough time to ensure that was the reason he got tickets.

Therefore, he can reject goods even though he accepted

Damages

Reliance Damages

Reliance damages seek to put the non-breaching party back to where they would be had the contract never formed.

Here, Sam will be entitled to \$1,700 in fines from his speeding tickets as well as \$1,000 from the transmission.

Rescission

K will be rescinded, and Sam will have to take the car back.

Bret vs XYZ?

Incidental Beneficiary

An incidental beneficiary is one who is named when a contract is formed, and the contract is made to benefit them.

Here, the contract was not made to benefit Bret. If anything, Bret is an incidental beneficiary and incidental beneficiaries do not have any contract rights.

Thus, he will likely not be able to recover from XYZ

QUESTION 2: SELECTED ANSWER B

1) Bret v. Sam

Governing Law

The Uniform Commercial Code (UCC) governs the sale of goods and common law governs all other agreements. Goods are movable objects that are not money or intangible rights. This agreement is over the sale of a Model Snazzy XYZ car, which is a good because it is a movable object that is not money or an intangible right. UCC governs.

Merchants

Rule: a merchant deals in the goods in kind or they have the knowledge/skills peculiar to the goods in kind.

The facts state that Sam is the owner of Marvelous Motors dealership meaning that he likely regularly deals in the sale of cars like the Model Snazzy XYZ. It is likely that the court will find that he is a merchant since he regularly deals in the Snazzy car. The facts say nothing of Bret other than that he wanted to buy a car meaning that it is not likely that he regularly deals in Snazzy cars or has knowledge/skills peculiar to the car. Bret will likely not be considered a merchant.

Bret will not be a merchant and Sam will be a merchant.

Contract Formation

Offer 1

Rule: a valid offer is a definite communication of intent to contract with a definite promise with definite terms and it gives the offeree the reasonable expectation that the offeror is willing to be bound by the terms of the offer.

The facts state that Bret told Sam that he wanted to buy a Model Snazzy XYZ car that was any color other than red. However, it is unlikely that the court will find that this is a definite communication of intent to contract because Bret was simply stating that he wanted to buy a certain model of car that was not red. He made no representation that he was presently willing to buy it or from whom he wanted to buy it. It is likely that the court will find that this is an invitation for offers.

Sam told Bret that the car would be ready on Friday, January 31. "The car" in this case is in direct reference to Bret's invitation where he asked for a Model Snazzy XYZ car that was not red. It is likely that the court will find that this is a valid communication of intent to contract because Sam was directly promising Bret in response to Bret's invitation that Sam would sell Bret a Model Snazzy XYZ that was not red on January 31 with definite terms as required under UCC: quantity (1 car). Further, Bret would have had the reasonable expectation that Sam was willing to be bound by the terms of the offer because Sam was answering Bret's invitation for offers.

There is a valid offer.

Acceptance 1

Rule: a valid acceptance is a definite and reasonable assent to the terms of the offer.

The facts state that, when Sam delivered the Model Snazzy car on January 31, Bret did not accept it meaning that there is not a valid acceptance.

With no acceptance, there is no mutual assent. With no mutual assent, there is no contract for the sale of the car.

Governing Law for possible contract 2

After Bret refused to accept the car that Sam had delivered on January 31, the facts state that Sam told Bret that he would allow Bret to try out the car that Bret had refused to accept for 3 months. This is regarding a service of renting a car, which is not the sale of a good. Therefore, common law will govern.

Offer

Rule: supra

The facts state that Sam told Bret that he would allow Bret to try out (rent) the red Model Snazzy XYZ car that Sam had delivered to Bret for 3 months with Sam's guarantee that Bret would not incur any speeding-related costs because of the car's color. It is likely that the court will find that this is a definite communication of intent to contract via a definite promise to allow Bret to rent the car for 3 months with definite terms as required under common law: quantity (1 car), time of performance (3 months), identity of parties (Bret and Sam), price (not mentioned in the facts but likely for no cost since the facts do not mention payments), subject matter (car rental). Further, Bret would have the reasonable expectation that Sam was willing to be bound by the terms of his offer because Sam was the owner of a car dealership and wanted Bret to use the red car so that he could buy it later.

There is a valid offer.

Acceptance

Rule: a valid acceptance is a definite and reasonable assent to the terms of the offer.

The facts state that Bret, after hearing Sam's offer, signed a document that Bret believed was a temporary use license, although this was not the case. Even if Bret was not actually signing a contract for Sam's offer, Bret nonetheless displayed a definite and reasonable assent to the terms of Sam's offer to Sam. Further, since Bret only signed the document, it is likely that the court will find that this is a mirror image acceptance of the offer per common law rules since Bret was signing a document, he believed had the exact terms of Sam's offer.

There is a valid acceptance.

There is mutual assent because there is a valid offer and acceptance.

Consideration

Rule: a bargained for exchange where each party will incur a legal detriment. The facts state that Sam is exchanging the use of his car to Bret but since no payment was discussed between the parties it is likely that the court will find that there is no valid consideration since Bret is not incurring any legal detriment in this exchange.

There is no valid consideration.

Promissory Estoppel

Rule: may be used to enforce an otherwise unenforceable agreement if one party foreseeably and detrimentally relies on the offer and the only way to prevent injustice is to enforce the agreement.

It is likely that, in the absence of consideration, Bret will argue on a theory of promissory estoppel. He will argue that, at the time that he agreed to this agreement with Sam, Bret believed that he had a valid agreement since he signed a document right after Sam explained what their agreement was supposed to be. Further, Sam knew that Bret believed that they had an agreement for temporary use of the car with a guarantee that he would not get speeding tickets due to the red color of the car because that is the term that Sam had just explained to Bret. Bret will argue that his reliance on Sam by taking and using the car was therefore foreseeable. Bret will argue that his reliance was detrimental because Bret used the car, and received speeding tickets valued at \$1700 where the officer told him that the red color of Bret's car allowed the officer to catch Bret speeding.

Bret will argue that the only way to avoid injustice will be to enforce the agreement between Sam and Bret because damages that he incurred due to the speeding tickets occurred because Bret relied on the existence of a contract with Sam whereby Sam guaranteed that Bret would not receive tickets for speeding due to the red color of the car. It is likely that Sam will argue that Bret's speeding was the reason that he was ticketed rather than the color of the car, but the facts specifically state that the officer would not have given Bret the ticket but for the red color of the Snazzy car.

It is likely that the court will enforce this agreement despite the lack of consideration.

defenses to contract formation

Statute of Frauds

Rule: marriage contracts, contracts that cannot be performed in less than a year, land sale agreements, executor contracts, guarantee contracts, and contracts for the sale of

goods over \$500 are subject to the Statute of Frauds and must be in a signed writing.

This agreement does not fall under the Statute of Frauds since it is not the sale of goods and will complete in 3 months. Thus, the Statute of Frauds does not apply, and this will not prevent the formation of a contract.

The court will enforce an agreement to rent of the Model Snazzy XYZ red car for 3 months between Sam and Bret.

Contract Performance

Express warranty

The facts state that Sam specifically told Bret that Bret would not receive any tickets for speeding due to the red color of the Snazzy car. This is an express warranty to the contract and, if the warranty fails to be true, then Bret can sue for breach of contract.

The facts state that the agreement that Bret signed disclaimed all warranties, but this clause is irrelevant to the Bret-Sam agreement because that clause pertained to a different contract. Between parties Bret and Sam, Bret gave his above warranty in an oral contract that will be enforced.

In this case, these facts state that Bret got 3 speeding tickets in February, 1 month into his agreement with Sam, and Highway Patrol officers told Bret that the red color of Bret's car caught their eye, and the officer would not have seen Bret speeding otherwise. Bret will argue that, in this case, the color of his car caused him to get a speeding ticket rather than the speeding itself because it was the color of his car that allowed the officer to see that Bret was speeding.

Sam will argue that Bret would not have received a ticket if he was not speeding and the color of the car had no effect on Bret choosing to speed and that Bret's belief that

red cars get more tickets is unfounded, but this will not defeat Bret's argument because the officer specifically told Bret that the color of Bret's car is what caused Bret to get a ticket and that Bret would not have otherwise received a ticket.

Therefore, it is likely that the court will find that Sam has breached an express warranty of the contract.

Material breach

Rule: a party commits a material breach when they fail to perform such that the benefit of the bargain for the other party has been substantially impaired.

Bret will argue that Sam's breach of express warranty was a material breach of contract because Bret's benefit of his bargain with Sam had been substantially impaired since he was receiving speeding tickets due to the color of his car, something that Sam had specifically guaranteed would not occur. The guarantee was a large part of why Bret entered the agreement because he already was worried that red cars receive more speeding tickets, and therefore it is likely that the court will find that Sam's breach of an express warranty of the contract is a material breach of contract.

Defenses for non-performance

Impracticability

Rule: may be a defense if performance has become substantially and unexpectedly more difficult and the affected party did not assume the risk of loss.

Nothing in the facts suggests that Sam's position has changed such that his performance had become any more difficult. This is not a defense.

Impossibility

Rule: may be a defense if performance becomes unexpectedly impossible for anyone and the affected party did not assume the risk of loss.

Nothing in the facts suggests that Sam's performance was impossible. This is not a defense.

Frustration of purpose

Rule: may be a defense if a party's reason for contracting has become unexpectedly frustrated and they did not assume the risk of loss.

This defense does not apply. Sam contracted with Bret in order to get Bret to buy the car later, but Sam always wanted Bret to purchase the car even after Bret received tickets since Sam is the owner of the dealership.

Remedies

Expectation damages

Rule: damages meant to put the breaching party in the position that it would have been in but for the breach.

Bret incurred \$1700 in speeding tickets, which he would not have done if Sam's express warranty had been true. Therefore, Bret may recover these damages from Sam.

Consequential damages

Rule: foreseeable damages that occur directly from a breach.

If Bret incurred any damages in being stopped by police, then he can recover these from Sam. These are foreseeable because Sam knew at the time of contract formation that Bret could be stopped by police if his express warranty was not true.

Quasi-contract

Rule: one party bestows a material benefit onto another party and for which the second party knows that the first party expects to be paid and it would be unjust for the first party not to be paid for the benefits.

It is likely that, since Sam refused to accept the car back that was being sold at his dealership and Bret had to pay \$1000 for the car's transmission, Bret can recover the cost of the transmission at \$1000 since Sam would understand that Bret would expect to be paid for repairs on a car that Bret did not own.

Bret can likely file a breach of contract claim to receive damages for the \$1700 tickets that he had to pay and the \$1000 cost to the transmission.

Bret v. XYZ Automotive Company

Governing Law

UCC governs the sale of goods and common law governs all other agreements. Goods are defined supra. This agreement is over the sale of a red Snazzy Model XYZ car which is a good because it is a movable object that is not money or intangible rights. UCC governs.

Merchants

Rule: supra

XYZ Automotive Company is the seller and likely the manufacturer of the Snazzy Model XYZ car that Bret is buying meaning that it is likely that XYZ regularly deals in Snazzy Model XYZ cars. Thus, XYZ will likely be considered a merchant. As stated supra,

nothing suggests that Bret regularly deals in or has special knowledge about the Snazzy Model XYZ car meaning that he will not be considered a merchant.

XYZ is a merchant and Bret is not a merchant.

Offer

Rule: *supra*

The facts state that Sam presented Bret with a contract between XYZ Auto Company for the sale of the Snazzy Model XYZ car for \$20,000 with any warranties disclaimed.

The contract is a definite communication of intent to contract via definite promise to sell the car for \$20,000 with definite terms as required under UCC: quantity (1 car). At the time that Bret signed the agreement, he had the reasonable expectation that the offeror who had written the contract was willing to be bound by it since he was signing a contract, even if he had not read the agreement since courts will impute either the fault of Bret's failure to read onto Bret.

There is a valid offer.

Acceptance

Rule: *supra*

The facts state that Bret signed the written contract from XYZ meaning that it is likely that there is a definite and seasonable assent to the contract even if he did not read it.

Consideration

Rule: *supra*

Bret is exchanging \$20,000 in exchange for XYZ's Snazzy Model XYZ car. There is a bargained for exchange because each party is incurring a legal detriment since they did

not achieve any previous duty or give over either the money or the car.

Defenses to contract formation

Misrepresentation

Rule: may be a defense to contract formation if a party misrepresents a material fact upon which the contract is based upon and the other party relies on the misrepresentation.

The facts state that Sam misrepresented the agreement between XYZ and Bret in its entirety because at the time that Bret signed the agreement, he believed that he was signing an agreement between Sam and Bret. Therefore, it is likely that he can avoid the contract between XYZ and Sam due to Sam's intentional misrepresentation.

Unilateral mistake

Rule: may be a defense if party is mistaken about a material fact upon which the contract is based upon and the other party knows or has reason to know of the agreement.

Bret believed that he was signing an agreement with Sam, but he was actually signing an agreement with XYZ, which Sam knew. Thus, the agreement can be discharged by Sam.

Remedies

Quasi-contract

Rule: supra

Since the car belonged to XYZ and Bret had made repairs to the car and showed that he did not have an agreement to purchase the car, he can recover in quasi-contract

since he was bestowing a material benefit onto XYZ by fixing the car and he expected to be compensated for it, which XYZ would reasonably understand since it was not Bret's car. XYZ did not personally accept the benefit, but it nonetheless accepted it impliedly when Bret fixed the car. Therefore, Bret can recover the \$1000 cost to the car's transmission that he incurred.

October 2021

ESSAY QUESTION 3 OF 4

Answer All 4 Questions



California First-Year Law Students' Examination

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the 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 3

Doug had a long history of serious mental illness. The illness caused him to experience delusions, that is, false beliefs not based in objective reality. The symptoms became more severe when he stopped taking medication.

One day, Doug stopped taking his medication because of its unpleasant side effects. Two days later, he became firmly convinced that he owned all blue bicycles in the world.

The following day, Doug saw a blue bicycle in a garage at the Smith house across the street. Doug became convinced the Smiths had stolen one of his bicycles. Doug went to the Smiths, accused them of theft, and as he was taking the bike away he shoved Mr. Smith. The Smiths called the police. The responding police officer gave the bike back to the Smiths and told Doug to stay away from the Smiths' garage.

During the afternoon of the next day, Doug enlisted the help of Kira, a fourteen-year-old girl who lived in the neighborhood. Kira knew nothing about Doug's dispute with the Smiths. Doug told Kira he owned the bike in the Smiths' garage and needed it back. He offered to pay Kira five dollars if she would get the bike for him.

Kira agreed. She went and removed the bike from the Smiths' garage and began to ride it across the street to deliver it to Doug. She failed to look for traffic and was hit by a car and killed.

1. With what crimes can Doug be reasonably charged? Discuss.
2. Can Doug successfully assert the defense of insanity? Discuss.

QUESTION 3: SELECTED ANSWER A

1)

State v. Doug

Larceny

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

Trespassory Taking: Here, Doug went to the Smiths' and took the blue bicycle without permission. Therefore, there is a trespassory taking.

Carrying Away: The facts state that Doug was "taking" the bike, inferring movement or asportation of the bicycle. Therefore, there is a carrying away.

Personal Property of Another: Here, the blue bicycle in the Smith's garage belonged to the Smiths, not Doug. Therefore, the bike was the personal property of another.

Intent to Permanently Deprive: Here, Doug believed the blue bicycle belonged to him, so he intended to keep it, permanently depriving the Smiths.

Therefore, there is a larceny.

Robbery

Robbery is a larceny committed through the use of force or fear.

Here, the trespassory taking was committed using force and fear because Doug entered the Smith's garage, accusing them of theft, and even shoving Mr. Smith.

The State will argue the unexpected entry, the false accusation, and the shove all

resulted in the fear and intimidation of the Smiths.

Therefore, there is robbery and larceny will merge into it.

Burglary

At common law, burglary is the breaking and entering into the dwelling house of another in the nighttime for the purpose of committing a felony therein.

Modernly burglary is the trespassory entry into any structure or vehicle with the intent to commit any crime, including petty theft, therein.

Here, the elements for common law burglary are missing the element of nighttime and likely the element of felony because the theft of a bicycle would not be a felony.

Modern Law Burglary

Trespassory entry: Here, Doug entered the Smith's garage without their permission.

Thus, there is a trespassory entry.

Into any Structure: Here, although the garage represents a structure that was entered.

Intent to commit a crime: Here, Doug intended to steal the blue bicycle.

Therefore, although all of the elements of common law burglary are not met, the elements of modern burglary are.

As a result, Doug can be charged with burglary, modernly.

Assault

Assault is the unlawful placing of another in immediate fear of an imminent touching.

Here, the State will argue that Doug came into the Smith's garage, accused them of theft, and took property belonging to them. The result of these activities, they will further argue, was that Mr. Smith was placed in fear of being offensively touched by Doug.

Therefore, there is assault.

Battery

Battery is the intentional and unlawful offensive or unwanted touching of another.

Here, the facts reveal that Doug intentionally shoved Mr. Smith. No one wants to be shoved, particularly in their own garage, and this shove was undoubtedly offensive to Mr. Smith, even if he were not injured by this touching.

Therefore, there is a battery.

Solicitation of Kira

Solicitation is the asking, inciting, or encouraging of another to commit an unlawful act.

Here, when Doug asked Kara to retrieve his bicycle from the Smiths, he was committing an unlawful act because the bicycle did not belong to him. Although Kira was unaware this was a crime because she thought the bicycle belonged to Doug, Doug was indeed aware it was a crime.

Therefore, there is solicitation.

Conspiracy with Kira

Conspiracy is the agreement between two persons to commit an unlawful act or a lawful act through unlawful means. In some jurisdictions, an overt act is required as well.

Here, although Kirra agreed to help Doug retrieve his bicycle and was even paid for the effort, there is no evidence to support the idea that Kira knew she was going to be committing a theft by taking the bicycle. She thought the bicycle belonged to Doug.

Therefore, there is no conspiracy.

Larceny through Kira

Larceny is described and defined supra.

Here, Doug was attempting a larceny of the Smith's bicycle through the use of Kira, an innocent agent operating unwittingly to help Doug. A crime can be committed through an innocent or unaware agent.

Therefore, Doug, through his agent, committed the larceny of the blue bicycle in the Smith's garage.

Therefore, there is Larceny through Kira.

Homicide of Kira

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

Here Kira, a human being, was killed because she was delivering a stolen bike to Doug at his request.

Therefore, there is a homicide.

Actual Cause

The actual cause is the cause which starts, ignites, or otherwise makes possible the results which follow and satisfy the "but for" or substantial factor test.

Here, but for Doug instructing his innocent agent, Kira, to bring him a stolen bicycle, Kira would not have been killed.

Therefore, Doug is the actual cause of Kira's homicide.

Proximate Cause

The actual cause is the proximate cause in the absence of intervening events that would make it unfair to hold the defendant responsible.

Here, there is the significant intervening act of Kira's failing to look out for traffic and being killed by a car.

Here, Doug will argue that Kira's carelessness was completely unanticipated and broke the chain of his causation.

However, the state will argue, and likely prevail on the point that careless bike driving when attempting to deliver a bicycle is indeed a foreseeable event that does not break the chain of his causation.

Therefore, Doug is the proximate cause of Kira's death.

Murder-Malice?

A homicide becomes murder if it is committed with malice aforethought.

Malice aforethought is the means rea required for murder and is evidenced by one of the following:

Intent to kill

Intent to cause serious bodily harm

Reckless disregard for human life (depraved heart)

Application of the felony murder rule.

Here, it is unlikely that the State will be able to prove any of these intents, because Doug wanted the blue bicycle and was not seeking the death of Kira. Therefore, intent to kill, cause serious bodily har, and reckless disregard for human life do not apply.

Additionally, Doug's solicitation and larceny of the bicycle are not crimes enumerated under the felony murder rule, which includes burglary, arson, robbery, rape, mayhem, kidnapping, sodomy, and sexual molestation.

As a result, there is no malice and therefore no murder.

Involuntary Manslaughter

Involuntary manslaughter is the killing of another human being, without malice, through a grossly negligent act or through the commission of a crime not covered under the felony murder rule.

Here, Kira died as a result if Doug's larceny, not a felony murder rule crime.

Therefore, Doug can be charged with Involuntary Manslaughter.

Defenses-Insanity

M'Naghten

Under M'Naghten, a person who suffers from a disease of the mind can use the M'Naghten defense if they do not know what he is doing or if what he is doing is wrong.

Here, because Doug was certain that all blue bicycles belonged to him, he didn't realize his attempt to obtain this bicycle was wrong.

Therefore, Doug can use M'Naghten.

Irresistible Impulse

Under irresistible impulse, a person who suffers a disease of the mind can use this defense if he cannot control his behavior.

Here, because he stopped taking his meds, Doug was unable to control his impulse to gain possession of the blue bicycle.

Therefore, he can use irresistible impulse.

Substantial Factor or MPC Test

Under the substantial factor or modern penal code test, a defendant suffering from a disease of the mind cannot control his behavior or conform his behavior to the dictates of the law. Here, Doug's belief in his ownership was a substantial factor in his committing these crimes.

Therefore, he can use the substantial factor test.

Product Rule

Here, Doug's theft was a product of h

QUESTION 3: SELECTED ANSWER B

1)

1. STATE V. DOUG--CRIMES

THEFT OF THE BLUE BICYCLE

Larceny

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

Trespassory Taking

The taking must be done without the consent of the proper possessor and the defendant must exert control over the property.

Here, Doug did not have the consent of the Smiths to take the bike. Further, by taking the bike away, it is established that he obtained control over the bike.

Thus, there was a trespassory taking.

Carrying Away

Carrying away requires only the slightest movement to be sufficient. Even if the defendant is eventually caught and/or apprehended, that is of no consequence.

Here, taking the bike away is sufficient because it involves movement, even if only slight. It does not matter that he was caught eventually and that the responding police officer gave the bike back to the Smiths.

Thus, there was a sufficient carrying away.

Personal Property of Another

The defendant must steal the property of a person who has custody or possession.

Here, Doug stole the Smith's blue bicycle, and he did not have custody or possession of the bicycle at such time.

Thus, he stole the personal property of another.

Specific Intent to Permanently Deprive

The specific intent to permanently deprive must be present at the time of the taking.

Here, as Doug was taking the bike away, he intended not to return it as he had accused the Smiths of theft and also he shoved Mr. Smith.

Thus, the requisite intent is met.

WHILE THERE LIKELY IS A LARCENY, LARCENY IS A LESSER INCLUDED OFFENSE, AND SO IF THERE IS A ROBBERY, THEN THE LARCENY MERGES AND DOUG WILL BE CHARGED WITH ROBBERY INSTEAD (SEE DISCUSSION INFRA).

Robbery

Robbery is larceny PLUS force. In other words, robbery is a taking and carrying away of the property of another from another's person or presence by means of force or threats of imminent force with the intent to permanently deprive.

Larceny Elements

Discussed and defined supra. All are met.

Person or Presence

The property must be taken either directly from the person (i.e., their body) or from their presence. Presence is defined as being within the vicinity of the victim.

Here, Doug took a bike while at the Smiths' house, thus in the vicinity of the Smiths.

Thus, the taking was done in the presence of the Smiths.

Force or Threat of Force

The defendant must either use physical force or threaten to imminently do so while stealing the property. This can be done even while the defendant has control over it.

Here, Doug shoved Mr. Smith while stealing the bike.

Thus, Doug used force.

AS MENTIONED SUPRA, BECAUSE LARCENY AND ROBBERY ARE CONSIDERED LESSER INCLUDED OFFENSES--MEANING YOU CAN ONLY BE CHARGED WITH ONE-- THE STATE WILL CHARGE DOUG WITH ROBBERY BECAUSE THE LARCENY WILL MERGE.

Battery

Battery is the intentional, negligent, or reckless application of unlawful force resulting in a harmful or offensive touching.

Here, Doug intended to shove Mr. Smith. Shoving is an unlawful application of force.

Thus, Doug has committed a battery.

DOUG WILL BE CHARGED WITH BATTERY.

Defenses Other than Insanity

Normally, a reasonable OR unreasonable mistake of fact is a defense to specific intent crimes.

So, if someone truly thinks they are retrieving their property, then they cannot be found guilty of specific intent theft crimes. HOWEVER, this is an issue for the insanity defense (discussed

supra).

USING KIRA AS AN AGENT FOR HIS THEFT

Solicitation

Solicitation is the inciting, urging, commanding, advising, or counseling another to commit a crime with the specific intent that the person solicited actually commit the crime. It is of no consequence whether the crime is actually committed because the crime of solicitation is complete once the person is solicited.

Here, the State might argue that Doug solicited Kira to commit the crime of larceny. However, Doug will likely counter that because Kira did not know that she was committing a crime, he could not be guilty of solicitation.

Thus, a solicitation charge is unlikely.

Conspiracy

Conspiracy is an agreement between two or more people to commit some unlawful objective or crime with the intent to agree and to commit the objective. Modernly there usually needs to be an overt act.

However, here because Kira was unaware of the crime and because Doug did not phrase it as committing a crime, there was no intent or agreement.

Thus, there was no conspiracy.

Larceny

Defined supra. Even if an innocent party does the actual larceny, the defendant may still be charged because he is using an innocent agent to accomplish his criminal objective.

Here, Doug enlisted the help of a 14-year-old girl, Kira, who knew nothing about the dispute with the Smiths, thus making her an innocent party. Further, Doug told her that he owned the

bike in the Smiths' garage and needed it back. Under criminal law, retrieval of property one believes to belong to themself or to another person is not considered theft or larceny. Thus, Kira honestly thought she was retrieving Doug's property. It was Doug who had the nefarious objective in mind and used Kira as an innocent agent to do so. Doug might try and argue that Kira knew she was committing a crime because he offered her five dollars if she would get the bike for him; however, five dollars is not really indicative as to whether there was criminal intent or knowledge on her part.

Trespassory Taking

Defined supra.

Here, Doug committed a trespassory taking via Kira because neither of them had the consent of the Smiths to exercise control over the bicycle that was in the garage.

Thus, there was a trespassory taking.

Carrying Away

Defined supra.

Here, Kira went and removed the bike from the Smiths' garage and began to ride it across the street to deliver it to Doug, showing that she had sufficient movement.

Thus, there was a carrying away.

Personal Property of Another

Defined supra.

Here, Doug had Kira steal the Smiths' blue bicycle of which neither he nor Kira had custody or possession of the bicycle at such time.

Thus, he stole the personal property of another.

This larceny will likely not be considered a lesser included and thus merged offense because no robbery occurred during this instance.

GUILTY OF LARCENY VIA INNOCENT AGENT.

DEATH OF KIRA

Homicide

A homicide is the unlawful killing of another person and requires causation--both actual and proximate.

Actual Cause

Actual cause is measured by the "but for" test. But for the defendant's acts, the harm would not have resulted.

Here, but for Doug having Kira steal and give a bike to him, Kira would not have been killed.

Thus, actual cause is met.

Proximate Cause

Proximate cause is where the result was foreseeable due to the defendant's actions. Where an intervening act causes an injury, the defendant remains liable, unless both the act and the result were unforeseeable. In that case, the act would be a supervening cause and would cut off the defendant's criminal liability.

Here, Doug might argue that it was unforeseeable that Kira would fail to look for traffic and be hit by a car and killed. However, the State will argue that due to the fact that Kira was only 14 and it is normal for children to ride bikes and not be as alert as an adult, that this result was foreseeable.

If the court finds proximate cause here, which it likely would, then causation will have been met.

Murder

At common law, there were no degrees of murder. Murder was defined as a killing with malice aforethought.

Malice Aforethought

Malice aforethought requires the defendant have one of the four following states of mind: 1) intent to kill (express), 2) intent to inflict serious bodily injury (implied), 3) depraved heart, or the reckless indifference to a high degree of risk (implied), or 4) intent to commit an inherently dangerous felony (implied).

Felony Murder

If during the attempt or commission of an inherently dangerous felony (burglary, arson, robbery, rape, or kidnapping), a victim is killed and it is independent of the felony and foreseeable, the defendant may be charged with felony murder.

Here, because if there was only a larceny, then Doug could not be charged with felony murder. However, if he committed a burglary via Kira, then maybe there could be one. However, the felony had terminated because Kira likely would have been considered as reaching a place of temporary safety.

Involuntary Manslaughter

The killing of another during the commission of a misdemeanor or other unlawful act.

Here, this might apply because it was a larceny, not an inherently dangerous felony.

Thus, maybe involuntary manslaughter.

DOUG WILL LIKELY BE ABLE TO BE REASONABLY CHARGED WITH: robbery, battery, larceny via Kira, potentially involuntary manslaughter,

2.STATE V. DOUG--INSANITY DEFENSE?

Insanity can be a defense to crimes. There are four main theories, and which one would apply is dependent on the jurisdiction. The four theories are: 1) M'Naghten Test, 2) Irresistible Impulse Test ("IIT") 3) Durham Test, and 4) Model Penal Code ("MPC") or ALI Test. Of note, most defenses raised by the defense that negate an element of the crime are required to be disproven by the prosecution beyond a reasonable doubt. However, for insanity specifically, the Supreme Court has ruled it is not unconstitutional to put the burden of proof on the defendant.

M'Naghten Test

Under the M'Naghten Test, a defendant may be found not guilty/acquitted if, by reason of mental disease or defect, the defendant is unable to 1) know the wrongfulness of his actions or unable to 2) understand the nature and quality of his actions.

Here, because of Doug's illness, which caused him to experience delusions, which were false beliefs not based in objective reality, he committed these crimes. The State will argue that Doug did know that his actions were wrong because following the first theft incident, the responding police officer expressly told Doug to stay away from the Smiths' garage. Doug's lawyer could argue, however, that the very fact that the police officer expressly told Doug to stay away from the Smiths' garage and he still did not obey the command means he clearly could not know that what he was doing was wrong. The State will counter that with the fact that he did know what he was doing was wrong because of the fact that the following day, he used a third party to commit his crimes for him, rather than do so again himself.

Thus, under the M'Naghten Test, Doug likely does not have a defense because he knew it was wrong and so used an innocent agent.

Irresistible Impulse Test ("IIT")

Under the ITT, a defendant may be found not guilty or entitled to an acquittal if, because of a disease or defect, he 1) cannot control his actions or 2) cannot conform his conduct to law.

Here, Doug will argue that because his delusions created false beliefs not based in objective reality, he was unable to control himself and or to conform to what the law so requires.

However, because he did not take his medication, the State has a valid argument as to whether he truly could not conform or control his actions. If he had taken his medicine, he likely could have controlled or conformed his actions. However, at the time of the crime, if that is when this defense is measured, he did not have control or conformity and thus, can raise a valid defense.

Thus, Doug likely has a defense under the ITT.

Durham Test

Under the Durham Test (only used in New Hampshire), a defendant is entitled to an acquittal if the crime he committed was due to the product of his disease or defect. In other words, it is a but for test. But for the mental disease or defect, the defendant would not have committed the crime.

Here, this would be the easiest defense to prove because all it would require is a showing that had Doug not had the disease, he would not have committed the crimes he committed. Here, but for his delusion that he owned all the blue bicycles in the world, he would not have committed the crimes he did. The State will once again argue that Doug's failure to take the medication is what caused the crimes, however, forcing someone to take medication with unpleasant side effects may not be held up in court.

Thus, it is likely this defense will succeed.

MPC/ALI Test

The MPC/ALI Test is somewhat of a combination between the M'Naghten Test and the IIT. If because of a mental disease or defect, the defendant is either 1) unable to appreciate the criminality of his actions (wrongfulness) or 2) conform his conduct to the law, then he is entitled to an acquittal.

Here, Doug will likely have a case because he could not conform his conduct to the law. However, as discussed supra, he likely could appreciate the wrongfulness of his actions. If this test requires both to be met, then Doug has no defense, but if only one or the other needs to be met, then Doug does have a defense.

Thus, Doug likely can use the MPC test as a defense.

DOUG HAS A VALID INSANITY DEFENSE, SUBJECT TO THE JURISDICTION'S APPROACH.

October 2021

ESSAY QUESTION 4 OF 4

Answer All 4 Questions



California First-Year Law Students' Examination

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the 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 4

Six months ago, Paul had abdominal surgery at Aspen Hospital to remove an ulcerated section of his large intestine. Dr. Johnson performed the surgery. Dr. Johnson told Paul that there were no problems with the surgery and assured him that he would not have any issues with his abdomen in the future. Dr. Johnson knew that one of the surgical clamps had been left inside Paul's abdomen and would likely cause future problems.

Three weeks ago, Paul experienced severe abdominal pains and went to the emergency room of Valley View Hospital. The emergency room doctor, Dr. Norman, immediately performed emergency abdominal surgery and removed an old surgical clamp. The old surgical clamp caused a massive infection in Paul's abdomen.

One week after the surgery done by Dr. Norman, when Paul was recovering in the post-surgical wing of Valley View Hospital, it was discovered that his lungs had been permanently damaged by a post-surgery pulmonary embolism (a blood clot that forms in the body after surgery and travels through the bloodstream to the lungs). Dr. Norman told Paul that a review of the medical charts indicated that Valley View Hospital's nurses should have discovered the embolism two days earlier than they did and that if they had, his lungs would not have been damaged.

When Paul asked Aspen Hospital about his first abdominal surgery, Aspen Hospital denied that it was responsible for any of his injuries.

What claims may Paul reasonably assert against, and for what injuries could he recover damages from:

1. Aspen Hospital? Discuss.
2. Dr. Johnson? Discuss.
3. Valley View Hospital? Discuss.

QUESTION 4: SELECTED ANSWER A

1)

Paul v. Aspen Hospital

Vicarious Liability: When liability is imputed from the tortious acts of a third party onto the defendant, because of a special relationship between the defendant and the tortfeasor.

Respondeat Superior: Generally, employers are held vicariously liable for the tortious acts of their employees, who are acting within the scope of their employment. Here, Dr. Johnson was the surgeon working at Aspen Hospital. "*Dr. Johnson performed the surgery.*" Thus, Dr. Johnson was acting within the scope of his employment.

Independent Contractors: One who is engaged to perform a service for another, free from control and direction from his employer/client with regard to the methods and manner of performance, except as to the results. Generally, employers are not vicariously liable for the tortious conduct of independent contractors, unless the activity is inherently dangerous, or because of public policy considerations the duties are non-delegable. Here, Dr. Johnson was engaged to perform the surgery (service) and was **free from control and direction** from Aspen Hospital with regard to all aspects of performance, except as to the results. Thus, Dr. Johnson is an independent contractor of Aspen Hospital.

Inherently Dangerous: Here, the activity of surgery is inherently dangerous as the surgeon is using tools to cut open and manipulate vital parts of the body within the torso of Paul. Thus, the activity is **inherently dangerous**.

Non-Delegable: In addition, as consent was strictly given to Dr. Johnson before surgery (which is *too personal*), and delegation of the duties would *materially change the obligee's (Paul's) expectations*, the duties are **non-delegable**.

Therefore, Aspen Hospital will be vicariously liable for the tortious conduct of Dr. Johnson. Aspen Hospital will be liable for the same damages that Dr. Johnson is found liable for.

Paul v. Dr. Johnson

Negligence: A duty to conform to a standard of conduct that is breached by the defendant, and the breach is the actual and proximate cause of plaintiff's damages.

Duty: A duty is owed to all foreseeable plaintiffs. Here, Paul is a patient of Dr. Johnson, whom Dr. Johnson is performing surgery on. Thus, Paul is a foreseeable plaintiff, who is owed a duty of care.

Standard of Care: Generally, one must act as a reasonable prudent person. Additionally, one will be held to a higher standard of care when they are a **Professional**. Professionals are required to possess the knowledge and skill of a member of the same profession in same or similar localities, in good standing. Here, Dr. Johnson will be held to the standard of another professional of the same profession (Surgeon).

Breach: A breach occurs when the defendant's conduct falls below the requisite standard of care. Either the defendant did something that a reasonable person would not have done, or the defendant did not do something that a reasonable person would have done. Here, the facts only indicate that "*one of the surgical clamps had been left inside Paul's abdomen.*" Thus, there may be insufficient facts to determine that Dr.

Johnson, himself, breached his duty of care.

Res Ipsa Loquitur: When the accident is the type that would not normally occur unless someone was negligent, the instrumentality causing the accident was in defendant's sole control, and plaintiff did nothing to bring about his injury, breach will be inferred. Here, Dr. Johnson, as the lead surgeon can be held responsible as the one in **sole control** because he is responsible for opening Paul's body, performing surgery, and closing Paul back up. This is the type of accident that would not normally occur unless someone was negligent. Finally, Paul did nothing to contribute to his injury, as he was presumably unconscious during the surgery. Thus, Breach will be inferred.

CAUSATION: For the plaintiff to recover, the defendant's breach must be the actual and proximate cause of the plaintiff's damages.

Actual Cause: The defendant's breach will be the actual cause of the plaintiff's injuries if the plaintiff would not have been injured as when and how he was, but for the defendant's breach. Here, Paul would not have had a clamp in his abdomen *but for* Dr. Johnson's breach.

Proximate Cause: The defendant will be the direct proximate cause if there were no intervening acts by third party or act of God, between the defendant's breach and the plaintiff's injury. All direct causes are Proximate causes, and the defendant will be liable if *Harm* was foreseeable. Here, there were no intervening acts between Dr. Johnson's surgery and the clamp being stuck in Paul's abdomen. Thus, Dr. Johnson's breach is the direct Proximate cause of Paul's injury, as *Harm* is reasonably foreseeable.

Additionally, Dr. Johnson will be the indirect Proximate cause of Paul's injuries where there is an intervening event and if the intervening event is

foreseeable. Here, **Medical Malpractice** is a foreseeable intervening event. Thus, Dr. Johnson will be liable for the medical malpractice claim established against Valley View Hospital (discussed below), with regard to the lung infection.

Damages: Economic injury only is not recoverable in a claim for Negligence. There must be some actual physical injury to person or property. For Personal injuries, the plaintiff can recover **Special Damages** which are Medical costs, reasonable and related, Economic loss, including lost wages and diminished future earnings capacity, and Permanent disability, estimated by life expectancy and statistical averages. The plaintiff *must* also recover **General damages** for pain and suffering, which are essential to a claim for personal injury. Here, Paul suffered actual physical injury to his person. Thus, Paul is entitled to recover the special and general damages caused by Dr. Johnson's negligence.

Avoidable Consequences: The plaintiff has a duty to mitigate his damages by taking reasonable steps to avoid further injury, after the initial injury is sustained. The defendant will not be liable for damages that could have been avoided. Here, Paul "went to the emergency room" and had an "emergency abdominal surgery" to remove the surgical clamp. Thus, Paul took reasonable steps to avoid further injury. Therefore, it is unlikely that damages will be reduced by a failure to mitigate damages.

Fraud: Misrepresentation of a material fact by defendant with scienter, which induces actual reliance by plaintiff, resulting in damages to the plaintiff.

Non-Disclosure: Generally, there is no liability for non-disclosure and no duty to disclose information, unless a fiduciary duty exists. Here, Dr. Johnson is Paul's doctor.

Thus, a fiduciary duty exists in which Dr. Johnson had a duty to disclose the material fact that a clamp had been left inside his abdomen. This is a material fact as Dr. Johnson knew that it "would likely cause future problems." Thus, Dr. Johnson made a *Misrepresentation of a material fact*.

Scienter: Knowledge that the statement was false, or a reckless disregard as to its truth or falsity. Here, the facts state that Dr. Johnson knew that "*one of the surgical clamps had been left inside*," and that it "*would likely cause future problems*." Thus, his statement was made with scienter, and thus, Fraudulent.

Battery: Act by defendant that intentionally causes a harmful or offensive contact to the plaintiff's person. Here, Dr. Johnson "*knew that one of the surgical clamps had been left inside Paul's abdomen and would likely cause future problems*." Additionally, in spite of his **knowledge of Substantial Certainty**, Dr. Johnson "*told Paul that there were no problems with the surgery and assured him that he would not have any issues with his abdomen in the future*." This, however, was a lie which constitutes the **volitional act** by Dr. Johnson. **Harmful contact** did eventually **indirectly** happen to Paul, as Paul "*experienced severe abdominal pains*." Thus, it was an indirect harmful contact to the **physical body** of Paul, *Plaintiff's person*.

Punitive Damages: Punitive damages are allowed where the defendant's conduct was willful, wanton, or malicious. Here, the fact that Dr. Johnson made a Fraudulent statement (with Scienter), may suffice for *Malicious conduct*. Thus, Paul may likely recover Punitive Damages.

Therefore, Paul can reasonably assert a claim for Battery, Negligence, and Fraud against Dr. Johnson.

Paul v. Valley View Hospital

Negligence: (defined supra.)

Duty: (defined supra.) Paul is a foreseeable plaintiff, who is owed a duty.

Standard of Care: (defined supra.) Valley View Hospital will be held to the standard of a professional in same or similar localities.

Breach: (defined supra.) Here, Dr. Norman "*told Paul that a review of the medical charts indicated that Valley View Hospital's nurses **should have** discovered the embolism two days earlier than they did and that if they had, his lungs would not have been damaged.*" Valley View Hospital's nurses did not discover it when they should have. Thus, they breached their standard of care.

CAUSATION: (defined supra.)

Actual Cause: (defined supra.) Here, after Dr. Norman reviewed the medical charts, he concluded that "*if they had [not breached], his lungs would not have been damaged.*" Thus, Valley View Hospital's nurses breach is the actual cause of Paul's lung damage.

Proximate Cause: (defined supra.) Here, there were no intervening acts between the nurses' inspection and Paul's infection. Thus, their breach is a direct Proximate cause of Paul's damages.

Damages: (defined supra.) Here, Valley View Hospital will be vicariously liable for the **special and general damages** (defined supra) that were caused by the nurses' breach of duty, with regard to the lung infection.

QUESTION 4: SELECTED ANSWER B

1)

1. What claims may Paul reasonably assert against Aspen Hospital? For what injuries could he recover damages?

NEGLIGENCE - DR. JOHNSON

If Dr. Johnson (J) is found to be negligent as will be discussed infra, then Paul (P) may have a case against him as well as against Aspen Hospital (AH) under the theory of vicarious liability.

VICARIOUS LIABILITY

An employer may be held liable for the damages caused by his employees if the damages were incurred during or within the scope of the employment or in furtherance of the work.

J was the one who performed the surgery on P at AH; therefore, J is a confirmed employee of AH and any damages J caused to occur to P during P's surgery, AH may be liable for because J will have caused them while performing the work, he was hired by AH to do, in furtherance of his employment under AH, on AH's premise, as AH's employee. The facts provided no indication of any supervening factors or statements that J was acting outside of his scope as an AH employee.

Therefore, AH may be vicariously liable for P's damages caused by J.

AH may in return file a claim against J for his malpractice and recover from J that way, but as far as P is concerned, AH may be held fully liable as J's employer and the one under whose scope of employment J was working when he caused P's injuries.

AH's declaration of denial that it was responsible for any of P's injuries will not protect it from liability if J is in fact found to have caused P's injuries in furtherance of AH's employment.

2. What claims my Paul reasonably assert against Dr. Johnson? For what injuries could he recover damages?

NEGLIGENCE

Foreseeable Plaintiff

P was a foreseeable plaintiff of J's tortious actions because P was a patient on whom J operated.

As the majority of jurisdictions which apply Judge Cardozo's view, P was clearly within the "zone of danger" as P must have been operating directly on beneath J's surgical knife. P was a foreseeable plaintiff of J's conduct.

Duty of Care

All people owe each other a duty of care to act as a reasonable person and avoid causing harm to others as necessary. Those in professional occupations are held to a more specific standard to not only act as a reasonable person, but also to act in accordance with a reasonable professional of that occupational community.

J, as a surgeon at AH, will be held to such a standard--that of a competent, professional surgeon

Breach of Duty

J knew that one of the surgical clamps had been left inside Paul's abdomen and would likely cause future problems, but still falsely assured P that there were no problems with

the surgery and that he (P) would not have any issues with his abdomen in the future.

This was not a mere opinion. This was a clear misstatement of fact that the facts establish J knew to be false. Lying to one's patient and refusing to warn him/her of foreseeable future harm falls beneath the standard of care required of J because it is not how a reasonable, professional surgeon would act in dealing with his patient, and furthermore, it creates a risk of physical harm when the surgeon's duty is to essentially eliminate or treat the patient's physical harm and maladies.

Actual Cause - Abdomen Infection

But for J ending the surgery without removing the surgical clamp and refusing to inform P of its presence and likelihood to cause future problems, P would not have experienced severe abdominal pains and would not have suffered a massive infection in his abdomen.

J is the actual cause of P's abdominal infection.

Actual Cause - Lung Damage

But for J's improper surgery and his leaving the surgical clamp in P's abdomen, P would not have needed to go the Valley View Hospital (VV) for surgery which resulted in his post-surgery pulmonary embolism causing permanent damage to his lungs. This chain of events would not have occurred but for J's conduct.

J is the actual cause of P's lung damage.

Proximate Cause - Abdomen Infection

P's abdomen infection was a foreseeable result of J's breach of duty because future problems were likely due to the surgical clamp being left inside P's abdomen. There

was no supervening cause cutting off or interrupting the chain of causation linking J's breach to P's abdominal infection.

J was the proximate cause of P's abdomen infection.

Proximate Cause- Lung Damage

P's lung damage was a foreseeable result of J's breach of duty because future medical mishaps are foreseeable, not unlikely, and not considered to break the chain of causation therefore relieving the original tortfeasor or liability. The pulmonary embolism resulted from a blood clot due to the surgery P needed due to J's low standard of conduct and failure to act according to his duty of care. There were no supervening forces cutting off J's causation and liability here because medical procedures are foreseeable when dealing with a physical ailment such as abdominal pains resulting from a surgical tool left inside the abdomen.

J was the proximate cause of P's lung damage.

Damages

P suffered severe abdominal pains as well as lung damage. His injuries are sufficient to recover damages.

General Damages

P may recover general damages for his pain and suffering.

Special Damages

P may recover special damages for his medical expenses which resulted from J's negligence.

Defenses

Assumption of Risk

While P consented to the surgery J performed, he did not consent to receive a lower standard of care as he expected and as was owed to him.

P did not assume the risk of J leaving a surgical clamp in his abdomen and therefore will not relieve J of his liability for doing so.

This defense will fail.

Comparative Negligence

In a majority of jurisdictions, the plaintiff's negligence may serve as a defense to the defendant's liability based on proportions of how negligent the plaintiff was compared to the defendant. (Pure comparative negligence allows the plaintiff to recover even if he was 50% or more negligent. Modified comparative negligence bars recovery if he was 50% or more negligent).

P was not negligent in that he did not act outside of how a reasonable patient would act.

Therefore, this defense will fail.

Contributory Negligence

In a minority of jurisdictions, the plaintiff's contributory negligence bars any recovery at all unless he had the last clear chance to avoid the damages, in which case the defendant could still claim this as a valid defense.

As already established, P was not contributorily negligent so this defense will fail.

3. What claims my Paul reasonably assert against Valley View Hospital? For what injuries could he recover damages?

VICARIOUS LIABILITY

Similar to prior discussion, VV will be held responsible for the negligent conduct of its doctors, surgeons, and nurses.

NEGLIGENCE

Foreseeable Plaintiff

Supra.

Duty of Care

Supra.

Breach of Duty

When the nurses at VV failed to discover the embolism two days earlier than they did, they breached their duty of care as healthcare providers and medical specialists to discover such problems because that is their primary purpose and focus as such professionals and failing to do so qualifies their conduct as beneath their professional and societal requirements and expected standard of care.

Actual Cause

But for the nurses failing to discover the blood clot in P's body after surgery, P would not have suffered lung damage.

VV was the actual cause of P's lung damage.

Proximate Cause

P's lung damage was a foreseeable consequence of the nurses' breach of duty in failing to review P's charts and notice his blood clot.

VV was the proximate cause of P's lung damage.

Damages

Supra.

Defenses

Assumption of Risk

Supra.

Comparative Negligence

Supra.

Contributory Negligence

Supra.

General Damages

Supra.

VV will not be held liable for P's abdominal infection because it was not the actual nor proximate cause of that injury, but VV will be held liable for P's lung damage.

Special Damages

Supra.

Jointly and Severally

P may sue VV along with AH for his lung damage as that injury was an indivisible injury of both hospitals' negligence. He may sue them jointly and severally.