Question 1

Mel suffers from a mental disorder that gives rise to a subconscious desire to commit homicide. Under the influence of the mental disorder, Mel formulated a plan to kill Herb by breaking into Herb’s house and shooting him to death while he was asleep.

Brent, who had never met or communicated with Mel, learned of Mel’s plan. Brent knew when and where Mel intended to kill Herb, and he desired to assist Mel in the crime.

On the night Mel intended to kill Herb, unbeknownst to Mel, Brent forced open the front door to Herb’s house so as to effectuate Mel’s entry and facilitate his killing of Herb. Mel arrived at Herb’s house. He discovered the front door open and entered the house. Mel tiptoed to the bedroom and sprayed bullets into Herb’s body. Unbeknownst to either Mel or Brent, Herb had died of a heart attack an hour before Mel fired the bullets.

1. Are Mel and/or Brent guilty of:
   b. Attempted murder? Discuss.
   c. Conspiracy to commit murder? Discuss.

2. Does Mel have a defense of insanity? Discuss.
Answer A to Question 1

Question 1: Mel/Brent

State vs. Mel

a. Is Mel Guilty of Murder?

Murder
Homicide at common law is the unlawful killing by a person of a human being. Murder at common law is the unlawful killing of a human being with malice aforethought. The element of malice aforethought can be met through (1) the intent to kill, (2) the intent to inflict serious bodily harm, (3) depraved heart/indifference, or (4) felony murder.

Most jurisdictions break murder into two degrees, first-degree murder and second-degree murder. First-degree murder is the unlawful killing of a human being with malice aforethought (see supra), along with either premeditation or a death that meets the Felony Murder rule. Felony Murder exists when the death of a person occurs during the commission of an inherently dangerous felony. At common law this included Burglary, Arson, Robbery, Rape, and Kidnapping.

Here, we are told that Mel desired to commit homicide and formulated a plan to kill Herb. The State will argue that the element of premeditation is present in that Mel formulated a plan to kill Herb by breaking into his house and shooting him while Herb was asleep.

Mel will counter that the definition of homicide and murder includes the unlawful killing of a human being. At common law a human being was defined as a person whose major organs, such as the heart, were still functioning. Modern definitions usually state that a person is a human being until their brain ceases to function, even if their organs are still working. Here, we are specifically told that when Mel entered Herb's room and
sprayed his body with bullets that Herb had already died of a heart attack an hour before Mel fired the bullets. Thus, while Mel had the requisite intent to kill Herb, and proceeded to take a substantial step towards killing Herb by spraying Herb’s body with bullets, Herb no longer met the legal definition of a human being when Mel shot him. Thus, since Mel did not commit an unlawful killing of [a] human being, as Herb was already dead and therefore no longer met the legal definition of a human being, Mel is not liable for murder. However, he may be liable for attempted murder (see infra).

b. Is Mel Guilty of Attempted Murder?

**Attempted Murder**

Attempt is a specific intent crime, where the defendant must specifically intend to commit the underlying crime of murder, and has either come dangerously close to completing the crime or has taken a substantial step towards the crime of murder. Under the common law, a defendant could be liable for the attempt of the underlying criminal act if their actions came dangerously close to completing the crime. This was often referred to as the proximity test. Under the modern approach, a defendant may be liable for attempt of the underlying crime if they have taken a substantial step towards completing the crime. Mere preparation for attempt is insufficient.

Here, the state will argue that Mel made a substantial step towards completing the act of murder when Mel entered Herb’s house, tiptoed to the bedroom and sprayed bullets into Herb’s body. The state will further argue that the spraying of Mel’s body with bullets meets the dangerous close proximity test for murder. Specifically they will note that Mel met the element of malice aforethought when Mel showed an outward desire to cause serious bodily harm to Mel by spraying his body with bullets. Furthermore, we are told that Mel desired to kill Herb, thus meeting the intent to kill element of malice aforethought.

Mel will argue that he should not be guilty of attempted murder due to a mistake of fact. Specifically, Mel will state that he believed that Herb was alive when he shot him. Mel
will state that since Herb was already dead, and no longer a human being under the legal definition, that all Mel did was commit an act of shooting at a corpse. However, the state will counter that such a mistake of fact will not prevent Herb from being liable for attempted murder, since if the facts were as Mel believed them to be, Mel would have in fact committed murder (absent a valid defense).

Mel may claim that he knew that Herb was dead when he shot him, but this claim will likely fail because (a) Mel was going to kill Herb when he was asleep and would not easily know the difference between being asleep or dead except upon close inspection and (b) we are specifically told that Mel and Brent did not know that Herb had already died.

Thus, because Mel took a substantial step towards killing Herb when he entered Herb’s home and sprayed his body with bullets, Mel has committed attempted murder. The mistake of fact that occurred in that Mel believed Herb was alive, although Herb had recently died of a heart attack, will not relieve Herb of liability for attempted murder. Attempt merges with the completed crime, but in this case, the crime of murder was legally impossible, therefore Mel will be liable for attempted murder absent a valid defense of insanity or self-defense.

c. Is Mel Guilty of Conspiracy to commit murder?

Conspiracy is when two or more persons agree to commit an unlawful act or a lawful act by unlawful means. Traditionally, conspiracy required that at least two or more of the parties had the criminal intent in what is referred to as the bilateral approach. Thus if Party A & Party B agreed to commit a crime, but Party B was a police officer only agreeing to catch Party A, then Conspiracy was not present. However, some modern jurisdictions will allow conspiracy even if only one party had the actual intent to commit the crime. Conspiracy requires either an express or implied consent of the conspiring parties, and most jurisdictions require that one of the conspirators complete a step
towards the completion of the agreed-to crime. However the smallest step, or even mere preparation, will suffice.

Here, we are told that Mel intended to kill Herb. Furthermore, we are told that Brent desired to assist Mel in the crime. The State will argue that the element of implied consent for conspiracy to commit murder existed by virtue of the fact that Brent assisted Mel by forcing the door of Herb’s house open to facilitate Mel’s killing of Herb. The state will further argue that the conspiracy was conspiracy to commit murder because Mel intended to kill Herb and Brent committed a step in furtherance of the conspiracy by helping Mel get into Herb’s house (see definition of murder supra).

Mel will argue that he never met or communicated with Brent. Furthermore, although Brent helped facilitate Mel's planned killing of Herb by forcing open Herb's door, it was done unbeknownst to Mel. Mel will additionally argue that the facts do not indicate that Mel or Brent ever mutually agreed to commit a crime. There is no evidence that their actions were coordinated, discussed, or that they were even in each other's presence. Conspiracy requires a mutual meeting of the minds to commit a crime. While Brent desired to help Mel kill Herb, there is no evidence that any agreement existed between them. The mere fact that Brent wanted to help Mel does not rise to the level of conspiracy.

Mel will be found not liable for conspiracy to commit murder.

**State vs. Brent**

**a. Is Brent Guilty of Murder?**

Accomplice liability occurs when a person either aids, abets, or assists a person in the commission of a crime. Here, we are told that Brent desired to assist Mel in his plan to kill Herb. Although Brent did not communicate this desire to Mel, Brent did provide assistance for the planned murder when Brent forced open the door of Herb's house.
This likely would incur liability for murder as an accomplice but for the fact that Herb was already dead. Since Herb was in fact not a human being, under the legal definition, when Mel shot him, it was legally impossible for Brent to be an accomplice to murder when Mel shot Herb (see discussion supra of Mel liability for murder). However, Brent may be liable for attempted murder (see infra).

b. Is Brent Guilty of Attempted Murder?

Accomplice liability occurs when a person either aids, abets, or assists a person in the commission of a crime. Here, we are told that Brent desired to assist Mel in his plan to kill Herb. Although Brent did not communicate this desire to Mel, Brent did provide assistance for the planned murder when Brent forced open the door of Herb's house. Brent took a substantial step towards his plan to help Mel commit murder when he forced open the door of Herb's house.

Brent will claim that he is not liable for attempted murder in that he never communicated with Mel, never discussed his desire to help Mel, and his actions to open the door were done unbeknownst to Mel. Brent will then state that he could not be an accomplice without Mel's conscious knowledge of his assistance. The state will counter that accomplice liability occurs when a person aids, assists, or abets another's criminal act. Furthermore, the state will be able to show that Brent was present the night that Mel shot Herb and helped facilitate Mel's entry and shooting of Herb. Based on these facts, Brent will be liable for attempted murder as an accomplice who assisted Mel's efforts to kill Herb.

c. Is Brent Guilty of Conspiracy to commit murder?

As discussed supra, Brent never met with Mel, or even acted in concert. While conspiracy does not require an express agreement to commit a crime, there must be a meeting of the minds to commit a criminal act as implied by circumstantial evidence, or implied consent. Here, we are told that Brent never communicated with Mel, and that
his actions on the night Mel shot Herb was done unbeknownst to Mel. It is not enough for Brent to simply desire to help Mel. As discussed supra, Mel and Brent did not have an implied or express agreement to commit a crime, and thus Brent is not liable for conspiracy to commit murder.

**Question 2: Does Mel have a defense of insanity?**

Mel's ability to successfully mount a defense of insanity revolves in part on the insanity approach used in Mel's jurisdiction, and the facts presented here. The four major insanity approaches used by most jurisdictions are (a) M'Naghten Test, (b) Irresistible Impulse, (c) MPC test, and, (d) Durham Product Test.

(a) **M'Naghten Test**

Under the M'Naghten Test, a defendant may be found not guilty by reason of insanity if his actions were the product of a mental disease or defect such that he did not know right from wrong or was unable to understand the nature of his actions. The M'Naghten test is used in the majority of jurisdictions.

Here, we are told that Mel's mental disorder caused him to have a subconscious desire to commit homicide. We are further told that under the influence of the mental disorder, Mel planned to kill Herb. The facts do not indicate that Mel did not understand right from wrong, or was unable to understand the nature of his act. In fact, his pre-planning seems to indicate that he knew his act was wrong. It is unlikely that Mel would be found not guilty by reason of insanity under the M'Naghten test.

(b) **Irresistible Impulse**

Under the irresistible impulse test, the defendant may be found not guilty by reason of insanity if their actions were the product of a mental disease or defect such that the defendant was unable to control his actions. In this approach, the defendant may know
that their actions were wrong, but the mental disease or defect they had caused them to be unable to resist the criminal act. It has been stated that such a defendant would be unable to resist performing the criminal act even if there was a policeman standing at their shoulder.

Here, we are told that Mel's subconscious desire to commit homicide was due to a mental disorder, and that under the influence of the mental disorder, Mel planned to kill Herb. It is possible that the desire that Mel experienced was so overwhelming that he was under an irresistible impulse to commit the killing of Herb. Further testimony is likely needed to establish this, but it is possible that the desire was so strong that Mel would be found not guilty by reason of insanity because he was unable to resist the desire to kill due to Mel's mental disorder.

(c) MPC Approach

The MPC (Model Penal Code) approach combines the M'Naghten Test and the irresistible impulse test such that a defendant may be found not guilty by reason of insanity if they were either unable to understand right from wrong or were unable [to] resist performing the criminal act as discussed in the Irresistible Impulse test supra.

Here, we are told that Mel's subconscious desire to commit homicide was due to a mental disorder, and that under the influence of the mental disorder, Mel planned to kill Herb. It is possible that the desire that Mel experience was so overwhelming that he was under an irresistible impulse to commit the killing of Herb. The MPC approach allows irresistible impulse and thus if shown, Mel would be [found] not guilty by reason of insanity under an MPC approach Further testimony is likely needed to establish this, but it is possible that the desire was so strong that Mel would be found not guilty by reason of insanity because he was unable to resist the desire to kill due to Mel's mental disorder.
(d) **Durham Product Approach**

Under the Durham Product approach, defendant may be found not guilty by reason of insanity if their criminal act was the product of a mental disease or defect. This approach has been criticized as being too broad and is rarely used in state jurisdictions.

Here, we are told that Mel's subconscious desire to commit homicide was due to a mental disorder, and that under the influence of the mental disorder, Mel planned to kill Herb. If it is shown that Mel's actions were a product of his mental disorder, and that he was unable to prevent himself from acting, he would likely be found not guilty by reason of insanity under the Durham approach.
Answer B to Question 1

Criminal law rules apply to this question.

Mel v State: Murder
Under majority of jurisdictions, murder is divided into 1st- and 2nd-degree and is defined as a homicide committed with malice.
A homicide is the killing of [a] human being by another human being. Here, Herb was already dead before Mel shot him; thus a homicide could not take place since you cannot kill someone who is already dead. Thus Mel is not guilty of murder.

Mel v State: Attempted Murder
Attempt is where D acts with the intent to complete a specific unlawful act and performs an overt act which constitutes a substantial step towards the commission of that crime.

The crime of murder is defined as a homicide committed with malice. Murder type Malice can be proven by one of four mens rea of a deliberated and premeditated intent to kill, felony murder, intentional infliction of serious bodily injury, or wanton and willful disregard for human life. The type two are usually 1st-degree murder and the latter 2nd-degree. Intentional murder requires that D deliberates, which means they are capable of reflecting; here Mel had quite some time to think about his plan with a cool mind; thus Mel deliberated. Premeditation requires that D in fact deliberated before acting, which we are told that Mel planned carefully; thus he premeditated. Then, finally, the facts tell us that he desired to kill Herb coupled with shooting Herb’s body all demonstrated intent, that is, a desire to kill Herb. All the elements are present for murder except that a homicide did not in fact take place; it was frustrated by Herb already being dead.

Attempt - Here, we are told that Mel desired to kill Herb, that he formulated a plan to kill him while he was asleep. These facts demonstrate an intent to commit a specific unlawful act [murder]. In addition, we are told that Mel takes a gun to Herb’s house,
goes inside and shoots Herb's body. This is clearly a substantial step towards the commission of the unlawful offense. All the elements for attempted murder are present. Whether Mel is guilty of attempt will depend on the jurisdiction due to disputed impossibility.

Factual impossibility - if the jurisdiction uses factual impossibility then Mel will be found guilty since it does not excuse specific intent crimes - crimes where D intentionally acts with the intent to complete a specific crime. Factual impossibility occurs where facts unknown to D prevent him from completing the crime he intended. Here, Mel was prevented from completing his murder of Herb only because Herb was already dead.

Legal impossibility - this is a defense against specific intent crimes. This occurs where D believes he is committing a crime which in fact does not exist and thus no crime occurred. Here, Mel believes he is killing Herb who is already in fact dead; thus he did not commit the crime of murder.

So, whether Mel is found guilty of attempted murder will depend on the jurisdiction and whether they use factual or legal impossibility as a defense against specific intent crimes.

**Brent v State: Murder**

An accomplice is someone who intentionally aids, abets or encourages another to commit a crime. Here, it could be said that Brent aided Mel by making sure that Herb's house was open so that Mel could complete the murder. However, for Brent to be guilty of murder as an accomplice, a murder had to have occurred and since no homicide occurred, Brent cannot be charged with murder.

**Brent v State: attempted murder**

Attempt- supra
Homicide - supra
Murder -supra
Accomplice - supra
If Mel can be charged with attempted murder because a legal impossibility defense is available in the jurisdiction, then Brent will also likely be guilty since he was an accomplice even though Mel did not know about his assistance. Brent did intentionally assist by opening the door to Herb's house for Mel with the specific intent that Mel kill Herb as the facts tell us was his desire.

**Mel & Brent: Conspiracy**
A conspiracy occurs where two or more people genuinely agree to commit an unlawful act and at least one performs an overt act in furtherance of the agreement. Here, we are told that Mel was not aware of Brent's assistance in trying to commit the murder, Brent was secretly helping him; thus there never was an agreement between the two. Without an agreement, they cannot be guilty of conspiracy.

**Mel: Insanity Defense**
An insanity defense would excuse Mel's unlawful conduct. Under M'Naghten a person is insane where medical or mental illness causes a defect in reason such that at the time of D's actions he is unable to understand the wrongfulness of his conduct or to appreciate the nature and quality of his actions. Here, it appears that Mel appreciates the nature and quality of his actions. He wants to kill Herb and appears to understand that shooting will kill him, so that part of his conduct does not fit an insanity defense. The part we are uncertain about is whether he understands that his acts are wrong. While the facts do not clearly point this out, we are told that he went to kill Herb at night and snuck into his room. These actions seem to indicate a desire to hide one's conduct which would insinuate an understanding that the acts were wrong. Thus, it is not likely that Mel will have an insanity defense under M'Naghten.

However, Mel might have a defense under the Model Penal Code [MPC] Insanity Defense if he's being tried under a jurisdiction that follows it instead of the M'Naghten rule. The MPC states that where due to mental defect, D lacks the substantial capacity to appreciate the wrongfulness of his acts and to conform his conduct to the law. Here, Mel might be able to argue that due [to] his mental illness, he was unable to conform his
actions to the law, the mental illness left him without the ability to control his actions despite knowing they were wrong.

Mel might have an insanity defense under MPC, but not under M’Naghten.