

## Question 2

Twelve-year-old Al was throwing rocks against a tree alongside the road to amuse himself while waiting for his school bus. One of the rocks thrown by Al missed the tree and shattered the windshield of an approaching car driven by Bill.

Bill, who had just left a bank he had robbed, was driving carefully and below the speed limit to avoid attracting the attention of the police. When the windshield shattered, Bill swerved, causing the car to run off the road. The car struck and killed Vic, a boy who had also been waiting for the school bus.

Chuck and Dave, Vic's brothers, decided that the accident had been Al's fault and, together, carefully planned to avenge Vic's death. They pooled their money and bought a shotgun, planning to use it to shoot Al. When the time came to go to looking for Al, however, Chuck told Dave, "I'm not going. If you want to do it, you're on your own." Dave carried out the plan, shooting and killing Al. After killing Al, Dave removed Al's watch and kept it for himself.

1. Did Al commit any crime relating to the death of Vic? Discuss.
2. Could Bill be found guilty of any crime relating to the death of Vic? Discuss.
3. Did either Chuck or Dave, or both, commit:
  - a. Conspiracy to murder Al? Discuss.
  - b. Murder of Al? Discuss.
  - c. Theft of Al's watch? Discuss.

## Answer A to Question 2

### 1. Al's crimes in relation to death of Vic

Battery - A battery is committed if an intentional unlawful application of force is applied to another person. Here Al is throwing rocks but one of his rocks accidentally hit a tree, bounced off and shattered Bill's windshield, causing Bill to swerve and hit and kill Vic.

Al would not be liable for battery.

Involuntary Manslaughter – A person would be found guilty of involuntary manslaughter if he acts by committing a misdemeanor or by acts of criminal recklessness, which result in the death of another.

There are no facts to show that Al acted with criminal recklessness as he was only throwing rocks against a tree.

Al would not be held liable in the death of Vic.

### 2. Bill's commission of a crime relating to death of Vic

Homicide – killing of another human being with malice

Malice is measured in one of four ways:

1. intent to kill;
2. intent to cause serious bodily injury;
3. wanton and willful disregard for human life; or
4. during the commission of an inherently dangerous felony.

Intent to kill is not shown from the facts.

Intent to cause serious bodily injury is also not shown from the facts.

Willful and wanton disregard is not shown here because Bill was driving very carefully.

Felony murder can be established if a murder occurs during the perpetration of an inherently dangerous felony. The felony continues until a zone of safety is reached. Here from the facts Bill had just completed a bank robbery (an inherently dangerous felony) and although he had left the scene, he was driving cautiously to avoid police. This indicates that he had not reached safety yet.

Therefore when he swerved as a result of the shattered windshield, and as a result hit and killed Vic, who was standing on the roadside, that death would result in felony murder.

Degrees of murder – Under common law, there were no degrees of murder, but modernly, first degree murder applies to premeditation and deliberation or felony murder. Here Bill would be guilty of first degree felony murder.

### Conspiracy to murder Al

Conspiracy under common law is complete when two or more persons agree to commit an unlawful act. Under modern law, conspiracy also requires an act in furtherance.

#### Chuck's liability and Dave's liability

Here Chuck agreed with Dave and they bought a shotgun they were going to use to kill Al. Therefore the conspiracy was complete as there was an agreement to perform an unlawful act (murder). The purchase of the shotgun was the substantial step. Both Chuck and Dave are guilty of conspiracy to murder Al.

#### Chuck's withdrawal from the conspiracy

To avoid vicarious liability for the acts that are reasonably foreseeable in furtherance of the conspiracy, a conspirator may withdraw by advising all coconspirators of his withdrawal. However in many jurisdictions unless he thwarts the objective, he is still liable. If the withdrawal is effective, the actor will still be liable for the conspiracy but not any subsequent crimes.

#### Chuck's coconspirator liability for murder of Al and Pinkerton Rule

Under the Pinkerton rule all coconspirators are held vicariously liable for all unlawful acts that are reasonably foreseeable toward the goal of the conspiracy. If Chuck's withdrawal was not effective, he would be liable for the murder of Al as a coconspirator.

#### Dave's liability for murder of Al

Murder (defined supra)

Intent to kill (supra) Here Dave had planned the murder of Al, purchased a shotgun, and killed Al.

Causation His actions were the direct cause of Al's death. Dave is guilty of intent to kill, murder.

Degrees of murder – (defined supra)

Here the murder of Al was carried out with premeditation and deliberation. This type of murder is first degree murder. Dave is guilty in the murder of Al.

Theft of Al's watch by Dave

Larceny – Trespassory taking and carrying away the personal property of another with the intent to permanently deprive.

Here Dave took Al's watch off his wrist after killing him and kept it. The theft was complete and Dave is guilty of theft.

Chuck's liability for theft of Al's watch

Coconspirator liability only extends to any criminal acts committed in furtherance and that are reasonably foreseeable to the objective of the conspiracy. Here the conspiracy was for murder not theft and theft was not part of the plan.

Therefore Chuck would not be liable for theft (larceny).

## **Answer B to Question 2**

### Al: Murder

Murder is the unlawful killing of a human or fetus with malice aforethought. Malice includes an intent to kill, intent to cause serious bodily injury, or an abandoned/malignant heart.

Although Al's act of throwing the rock resulted in an accident causing the death of another, he did not show the necessary malice required, as he was just throwing rocks at a tree on the side of the road while waiting for the bus.

Al did not commit murder.

### Al: Involuntary Manslaughter

Involuntary Manslaughter is homicide without malice. The homicide may be caused with the intent to inflict less than serious bodily injury, or during the commission of an unenumerated felony.

Al was simply throwing rocks at a tree. He was not acting with intent to cause any injuries, serious or not, nor was he committing a felony.

Al did not commit Involuntary Manslaughter.

### Al's Defense: Infancy

There is a rebuttable presumption of inability to form intent for children between the ages of 7 and 14.

Al did not commit any crime relating to the death of Vic.

### Bill: First Degree Murder under the Felony Murder theory

First Degree Murder is murder by poison, torture, lying in wait, or murder done wilfully, deliberately, and premeditated, or felony murder. Felony Murder is a death caused during the commission, or while fleeing, from an enumerated felony, including Robbery.

The facts stipulate that Bill had been driving on his way from committing a robbery. The fact that he was driving carefully and under the speed limit does not change the fact that he was still fleeing from a robbery. However, the purpose of the Felony Murder rule is to deter from the commission of dangerous felonies, such as robbery, not to punish one for an unrelated incident. Apparently the police were not in pursuit of Bill; otherwise he would not have been avoiding detection. Acting so carefully as to avoid detection does not constitute fleeing.

Fleeing implies that one is being pursued and trying to escape. Since Bill had already escaped, it can be argued that he has reached a point of temporary safety.

Bill should not be liable under the Felony Murder rule if it can be determined that he was not fleeing, and that he had reached a point of temporary safety. Deaths caused after one has reached a point of temporary safety are not Felony Murder.

#### Bill: Vehicular Manslaughter

Vehicular Manslaughter is homicide by means of negligent operation of a vehicle.

Because Bill swerved as a result of a rock shattering his windshield, he cannot be found to have been driving negligently, causing the death of Vic.

Bill should not be found guilty of any crime relating to the death of Vic.

#### Chuck and Dave: Conspiracy

Conspiracy consists of an agreement, intent to agree, intent to pursue an unlawful objective, and as a modern rule, an overt act in furtherance of the conspiracy.

The facts stipulate that Chuck and Dave carefully planned to commit murder. This satisfies the requirements of an agreement and the intent to agree. The facts go on to reveal that they bought a shotgun in preparation for carrying out their plan. This is the overt act required and shows that they did intend to pursue their unlawful objective.

#### Chuck: Withdrawal from Conspiracy

Withdrawal from conspiracy does not relieve liability for the conspiracy itself. It may, however, relieve liability for any subsequent crimes in furtherance of the conspiracy. The fact that Chuck decided not to follow through with the plan does not relieve him for liability for the conspiracy because the crime has already been completed upon purchase of the shotgun.

#### Dave: First Degree Murder

First Degree Murder is murder by poison, torture, lying in wait, or murder done wilfully, deliberately, and premeditated, or felony murder.

The facts stipulate that the murder was done wilfully, deliberately, and it was premeditated.

Dave should be found guilty of First Degree Murder.

### Chuck: Accomplice Liability

Accomplices are liable for the crime itself. However, Chuck was not an accomplice because he was not present during the commission of the crime.

### Chuck: Accessory before the fact to Murder

Because Chuck participated in the planning of the murder and the purchase of the murder weapon, although he was not a principal in the murder of Vic, he should be held liable as an accessory before the fact to murder.

### Dave: Robbery

Robbery is the trespassory taking and carrying away of the personal property of another, from the person or presence, by means of force, fear, intimidation, and the intent to deprive permanently.

Because Al was already dead when Dave took the watch, Dave did not take it by means of force, fear, or intimidation. A dead person cannot have these emotions.

Dave has not committed robbery.

### Dave: Larceny

Larceny is the trespassory taking and asportation of the personal property of another with the intent to deprive permanently at the time of the taking.

The facts stipulate that Dave took the watch from Al's arm and kept it for himself.

Dave has committed larceny.

### Chuck's liability for the larceny

Chuck should not be liable for the larceny because it was not a foreseeable act in furtherance of the conspiracy.