

Question 2

Vladimir owed Donald a gambling debt. Knowing that Vladimir had a new laptop computer, Donald sent an e-mail to Brenda, who lived close to Vladimir. The e-mail informed Brenda that Donald had left his laptop at the home of Vladimir, who was away for the weekend, but that Vladimir had given Donald permission to retrieve his laptop while Vladimir was gone. In the e-mail Donald asked Brenda to go to Vladimir's house, locate the door key under the mat on the porch, and bring the laptop to Donald.

Corky, who was at Brenda's house when Donald sent the e-mail to her, read the e-mail and rushed over to Vladimir's house to steal the laptop. When Brenda later arrived at Vladimir's house to retrieve the laptop for Donald, she found the back door open and Corky ransacking the house. Corky was so startled that he fell backwards, hit his head on a table and lost consciousness as he fell to the floor. Brenda went upstairs where she searched for and found the laptop. Always wanting a laptop, she put Vladimir's laptop in her purse to keep for herself. Brenda then called 911. Before the police arrived, Corky regained consciousness and fled out the back door.

When the police arrived at Vladimir's house, Brenda told them that she believed Corky had taken a laptop from the house. When the police went to Corky's house, they found him dead from his head injury.

What crimes, if any, might Donald, Brenda and Corky reasonably be charged with, and what defenses, if any, might each assert? Discuss.

Answer A to Question 2

STATE V. DONALD

SOLICITATION OF BRENDA

An act of inciting, enticing, or counseling of another, with specific intent to induce them to commit a crime.

Donald e-mailed Brenda and asked her to retrieve his laptop from Vladimir's house.

This is an act of inciting and counseling of another, Brenda, to commit a crime.

However, Donald will argue that Brenda's act would not be a crime because she would not be intending to permanently deprive Vladimir of Vladimir's laptop.

However, State will show that this would be a crime as to Donald, because Donald would be committing a burglary by an innocent agent.

Thus, Donald incited Brenda to commit an illegal act, burglary.

Thus, Donald is guilty of solicitation of Brenda, absent an applicable defense.

SOLICITATION OF CORKY

Defined *supra*.

Donald e-mailed Brenda and, as discussed *supra*, solicited her to commit burglary.

However, Donald did not intend to solicit Corky, and further, he did not know that she was even present at Brenda's house.

Thus, Donald did not solicit Corky with intent to induce her to commit a crime.

Thus, Donald is not guilty of solicitation of Corky.

CONSPIRACY TO COMMIT LARCENY/BURGLARY

An agreement between two or more persons to commit an illegal act.

State will argue that Donald agreed with Brenda and Corky to commit burglary.

However, Donald only solicited Brenda, and did not have any agreement with either Brenda or Corky.

Thus, Donald is not guilty of conspiracy.

ATTEMPTED COMMON LAW BURGLARY

Attempt: The substantial step towards perpetration of an intended crime

Common Law Burglary: The breaking and entering of the dwelling of another, in the nighttime, with specific intent to commit a felony therein.

Donald attempted to have Brenda commit a burglary of Vladimir's house. However, as discussed *infra*, Brenda did not commit a common law burglary because there was no breaking.

Donald succeeded in having Brenda commit an entering of the dwelling of Vladimir, with specific intent to commit a felony therein – larceny.

This is a substantial step toward perpetration of an intended crime, burglary.

Thus, Donald is guilty of attempted common law burglary, absent an applicable defense.

MODERN LAW BURGLARY

Modern Law Burglary: The trespassory entering of any structure with specific intent to commit a crime therein.

Donald succeeded in having Brenda commit a trespassory entering of the structure of Vladimir when she entered without his permission, and with specific intent to commit the crime of larceny therein.

Donald will argue that Brenda did not herself intend to commit larceny, and there is no concurrence.

However, State will show that Brenda was an innocent agent, and thus, Donald can still be convicted.

Thus, Donald is guilty of modern law burglary, absent an applicable defense.

LARCENY

The trespassory taking and carrying away of the personal property of another with specific intent to permanently deprive.

Here, Donald used Brenda as an innocent agent to take Vladimir's laptop.

Donald knew that this was a trespassory taking and carrying away because Brenda was going to take it and carry it to him, without Vladimir's consent.

Further, this was the personal property of Vladimir, another, and Donald intended to permanently deprive Vladimir of the laptop.

Thus, Donald is guilty of larceny, absent an applicable defense.

ACCOMPLICE LIABILITY

State will argue that Donald should be guilty of homicide of Corky under accomplice liability for the acts of Brenda.

However, Donald will show that, as discussed *infra*, Brenda was not guilty of the death of Corky.

Thus, Donald is not guilty of homicide.

Finally, as discussed *infra*, if the court were to determine that Brenda is guilty of involuntary manslaughter, Donald would still not be guilty because he did not specifically aid and abet the crime of homicide.

Defenses Donald can raise to the above crimes

There are no defenses which Donald can raise to the above crimes.

STATE V. BRENDA

CONSPIRACY TO COMMIT LARCENY

As discussed *supra*, there was no agreement.

Thus, Brenda is not guilty.

COMMON LAW BURGLARY

Defined supra.

Brenda entered Vladimir's house through the open door.

This is not a breaking.

Thus, although Brenda committed an entering of the dwelling of another, there is no breaking, no nighttime, and no specific intent to commit a felony therein.

Brenda is not guilty of common law burglary.

MODERN LAW BURGLARY

Defined supra.

Brenda entered Vladimir's house without his permission. This is a trespassory entering.

Vladimir's house is the structure of another.

However, Brenda did not intend to commit a crime therein at the time she entered, because she thought that the laptop was actually Donald's, and it wouldn't be stealing to take it.

Thus, Brenda is not guilty.

LARCENY

Defined supra.

Brenda took the laptop, intending to keep it for herself.

This is a taking and Brenda carried it away by picking it up.

It was personal property of Vladimir, another.

Further, Brenda intended to permanently deprive the owner of the laptop of it.

Thus, Brenda is guilty absent an applicable defense.

HOMICIDE

The killing of a human being by another human being.

Brenda walked into Vladimir's house, causing Corky to fall over and die.

ACTUAL CAUSE

But for Brenda entering Vladimir's house, Corky would not have been startled and died.

PROXIMATE CAUSE

State will argue that it is reasonably foreseeable that entering the house of another without permission will cause another to die.

However, Brenda will show that she was not committing any crime by entering, as discussed *supra*, and it is not foreseeable that merely entering another's house without permission will cause someone to die.

Thus, there is no proximate cause.

However, even if the court were to find proximate cause, Brenda would still not be guilty because she did not have any intent to kill, intent to cause serious bodily injury, a depraved heart act, and the killing did not occur during commission of a felony.

Further, she did not act with criminal negligence, intent to inflict non-serious bodily injury, or through commission of a misdemeanor because there is no crime for simply trespassing.

Finally, if the court were to find that it is a misdemeanor to commit a trespass on another's land, Brenda would be guilty of involuntary manslaughter because the killing occurred during commission of an unlawful act.

Defenses Brenda can assert against the above crimes

Mistake of fact

Brenda will argue that she was mistaken as to the fact of whose laptop she was taking.

Although this is generally not a valid defense, it will be if it negates the specific intent for any crime.

Here, this is a valid defense to all of the above crimes except the larceny, because it does not make a difference whose laptop Brenda thought she was stealing when she actually stole it.

Thus, this is a defense to most of the crimes, but not the larceny.

STATE V. CORKY

CONSPIRACY TO COMMIT LARCENY

As discussed *supra*, there was no agreement.

Thus, Corky is not guilty.

COMMON LAW BURGLARY

Defined *supra*.

The facts do not state exactly how Corky entered the house; however, it is likely that Corky broke into it through the back door, because Vladimir was gone, and he likely locked the door.

Thus, there is likely a breaking, and Corky then entered.

This was the dwelling house of Vladimir, another.

Further, Corky intended to steal the laptop, a larceny, which is a felony, at the time he entered.

Thus, Corky is guilty of common law burglary.

MODERN LAW BURGLARY

Defined *supra*.

Corky trespassorily entered the structure of another, Vladimir, because he did not have Vladimir's permission to enter.

At the time Corky entered, he intended to commit the crime of larceny therein.

Thus, Corky is guilty of modern law burglary.

MALICIOUS MISCHIEF

The malicious infliction of injury to the property of another.

Here, Corky ransacked Vladimir's house. Ransacking a house generally involves causing injury to the house or the property therein, which was the property of Vladimir, another.

This was malicious, because Corky intended to do it and acted recklessly in acting thus.

Thus, Corky is guilty of malicious mischief.

ATTEMPTED LARCENY

Defined supra.

Corky wished to steal Vladimir's laptop. He acted in perpetration of this intent when he burglarized his home and ransacked the house looking for the laptop,

This is a substantial step towards actually taking the laptop because he had specific intent to take it, there was no legal or factual impossibility, he had the apparent ability to succeed, and he acted towards perpetration of an intended larceny.

Thus, Corky is guilty of attempted larceny.

Defenses Corky can raise to the above crimes

There are no defenses which Corky can raise to the above crimes.

Answer B to Question 2

I. State vs. Donald:

The state could reasonably charge Donald with the crimes of solicitation, conspiracy, and as an accomplice.

Solicitation?

Solicitation is the crime of asking or encouraging another to commit a crime and having the specific intent that the crime be committed. Here, the facts show that Donald was attempting to recover on a gambling debt owed to him by Vladimir, (hereinafter "V"), and in turn submitted an e-mail to Brenda who lived close to "V" asking that she go to his home and secure a laptop while "V" was not at home. Knowing that he did not have lawful possession of this laptop he requested that Brenda assist him in committing larceny. His asking of Brenda to participate in this act would merge into the completed offense and, therefore, he would be guilty of solicitation.

Conspiracy? Where two or more parties agree to commit a crime. Under the common law approach there had to be two guilty minds in order for the defendant to be guilty of conspiracy. The more MPC approach is that a defendant can be guilty of this crime with a unilateral decision to commit a crime even if the other party did not agree. Here, the facts show that Donald sent an e-mail to Brenda asking her to secure the laptop from "V"'s home using a key that was under the doormat on the porch and to bring it to him. Prior to Brenda reading the e-mail Corky read the e-mail and rushed over to "V"'s home to steal the laptop. There is no indication here that Donald had any agreement with Corky to steal the laptop, committing a larceny or burglary of "V"'s home. There are facts, however, to support that after reading the e-mail from Donald, Brenda rushed over to "V"'s home to secure the laptop for Donald; however, once she arrived and located the laptop she placed the laptop in her purse, intending to keep it for herself. This was not the agreement she held with Donald, as she wanted to keep this laptop for herself. There is no indication that Brenda ever responded to Donald's request and she simply reacted to the e-mail presented. Under the common law approach there would

be no conspiracy between Donald and Brenda or Donald and Corky as they did not agree to commit either the crime of larceny or burglary prior to commencing upon each act.

Accomplice to Larceny or Burglary?

An accomplice is one who aids, abets or encourages the committing of a crime and has the intent that the crime be committed. One who is considered as an accomplice could be charged with the same crimes and the principal offender. Here, Donald would likely be considered an accomplice to the crimes of larceny and burglary.

Burglary: Under common law, burglary was the breaking and entering of the dwelling place of another, at night, with the intent to commit a felony therein. The more modern majority has removed the at night and dwelling house requirements for this crime.

Breaking and entering?

Here, the facts show that Donald advised in his e-mail that the key to “V”’s home would be under the mat on the porch. While this would grant entry into the home, this entry would still be considered unlawful as none of the parties involved had prior authority to enter “V”’s home. The facts also show that Corky used this key to open the back door of the home and was later found ransacking the house in an attempt to locate this laptop. This would satisfy the breaking and entering components under either the common or modern view of burglary.

Felony therein?

The second component to the burglary crime is that of committing a felony therein. Here, the facts show that Corky, using information provided by Donald, rushed over to “V”’s home to steal the laptop. This would amount to a larceny, which would be considered a felony, thus satisfying the second component of burglary.

Larceny: This is the trespassory taking and carrying away [of] the property of another with the intent to permanently deprive. Here, the facts show that as Donald advised in

his e-mail that his intent was to have Brenda remove (trespassory taking) the laptop owned by "V" (property of another) while he was out. Donald's intent was to use this laptop as compensation for an outstanding gambling debt owed to him (permanently deprive).

Therefore, if Donald is found to be guilty as an accomplice he can be reasonably charged with the crimes of burglary and larceny.

Defenses:

Consent would be a valid defense that Donald could present to these charged crimes as the facts show that he was owed an outstanding gambling debt. This defense would only be valid if it were true that "V" had made a prior agreement with Donald that the laptop would be a valid exchange for his outstanding debt. There are no facts here to support this; therefore, consent would not likely be a valid defense for Donald.

II. State vs. Brenda:

Conspiracy? Please see definition supra. Here, as the facts show Brenda did receive Donald's e-mail and immediately went over to "V"'s home, where she searched for and found the laptop. As Brenda intended to keep the laptop for herself and there is no indication that she and Donald ever came to an actual agreement that she would commit the crimes of burglary or larceny and turn over the laptop to Donald. Therefore, under majority rules where two guilty minds are required Brenda would not be guilty of conspiracy.

Burglary? Please see the definition supra. Here, the facts show that Brenda later arrived at "V"'s house to find the back door open. She did enter the home which would satisfy the entering element of burglary; however, since the home was open there would be no breaking of an entry. In addition the facts show that Brenda was going to secure the laptop for Donald and later decided to keep the laptop for herself. Since it was not conclusive from the facts that she intended to commit a felony prior to entering the

home, and there was no breaking of an entry, Brenda would likely not be found guilty if charged with the crime of burglary.

Larceny? Please see definition supra. Here, the facts show that after arriving Brenda went upstairs and searched for the laptop owned by “V” (property of others). She placed the laptop in her purse, intending to keep it for herself, as she always wanted one (intent to deprive) and left “V”’s home (trespassory taking and carrying away). If Brenda is charged with the crime of larceny she would likely be found guilty of the same as the elements required have been satisfied.

Accomplice? Please see definition supra. Here, the facts show that Brenda, after taking the laptop, called the police and informed the police that she believed Corky had taken the laptop from “V”’s home. These actions would constitute Brenda as being an accessory after the fact, as she continued to aid and abet the potential crimes of burglary and larceny after notifying the police.

Murder? Murder is defined as a homicide or killing of a human being with malice aforethought. Malice can be determined by the intent to kill, the intent to seriously injure, depraved heart or reckless indifference for human life, or a murder that takes place during the commission of an inherently dangerous felony. Here, the facts show that Corky died after the events of the night took place. Burglary of a home would be considered an inherently dangerous activity and therefore the malice element could be inferred upon Brenda for a death that occurred during this act. In order for the felony murder malice element to be satisfied it must be shown that the death of Corky was foreseeable, the death occurred during the commission of the felony, and the defendants had not reached a point of safety. Here, the facts show that upon her arrival to the home Corky was in the process of ransacking the place. He was startled by Brenda’s arrival, fell and suffered a head injury as a result. Prior to Brenda leaving, Corky regained consciousness and fled the scene. He was later found dead at his home upon the police arrival. There is no indication from the facts that if charged with murder that Brenda did anything to participate in this homicide of Corky as when she

saw him he was alive and either ransacking or fleeing the area. Therefore, a charge of the murder of Corky would not likely be a valid charge against Brenda.

Defenses?

Mistake: A good faith and reasonable mistake may absolve the defendant of all liability. Here, the facts show that Brenda was informed via e-mail that “V” had given permission to Donald to secure his laptop while he was out. She was also informed where to locate the laptop in the home as well as where to locate the key. This may appear as a reasonable mistake, however not in good faith as upon her arrival to the home she saw that Corky, who was at her home, was ransacking the place. This would have given her reasonable inference that it was possible that permission was not granted and therefore she would not have continued forward with the taking of the laptop. Therefore, this would not be a valid defense for Brenda.

III. State vs. Corky

Conspiracy? Please see definition supra. Here, there are no facts to support that Donald had any agreement with Corky. Therefore a charge of conspiracy against Corky would not likely prevail for the state.

Burglary? Please see definition supra. Here the facts show that Corky took the information provided in the e-mail, he rushed over to V’s home to steal the laptop, he used the key to open the door of V’s home and enter with the intent to deprive him of the laptop. This would satisfy all of the elements required for burglary and a charge of the same would likely prevail for the state.

Larceny? Please see definition supra. Here, the facts show that Corky did intend to trespassorily take the laptop from V’s home; however, upon Brenda’s arrival he was startled and knocked unconscious. Once able to regain his consciousness he fled the scene without any property. Therefore a charge of larceny would not be valid against Corky as he had the requisite intent but did not actually take away any property from V.