

Monterey College of Law
Criminal Law & Procedure – Section 1
Midterm Examination
FALL 2021
Professor S. Haas

General Instructions:

Answer All Three Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

Criminal Law & Procedure- MCL Section 1
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QUESTION 1

David lost his job and was facing financial struggle. To make ends meet, David decided to kidnap and hold someone for ransom. He asks his friend Adam for help, but because Adam knows David has temper issues, he refused because he did not want anyone to get hurt. But David promised that he only wanted the money and would not hurt anyone, so Adam decided to help.

Adam and David grabbed a woman at the local grocery store, put her in the van, drove her to an abandoned warehouse, and locked her in a room. Adam and David could not send a ransom note to the woman's husband because she refused to provide any information.

After trying for two days, David told the woman, "You better give me your husband's information or I'm going to kill you." The woman refused and hit David in the face, David became frustrated and beat the woman badly. Eventually, she passed out from the pain. David told Adam to drop the woman somewhere in public because she needed medical attention.

David and Adam left the woman in the parking structure of a shopping mall and called 911. The para-medics arrived and took the woman to the hospital. The woman died due to excessive blood loss and blunt force trauma to head.

1. Are David and Adam guilty of battery, assault, and/or kidnapping?
2. Is David guilty of murder?
3. Adam is charged with homicide. Is he guilty under the felony murder rule?

Please discuss all theories of Homicide. Discuss California Law only.

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QUESTION 2

Alan and Dorothy live in a quiet sub urban neighborhood. A recluse man named Richard moved into a house and Alan Dorothy developed an immediate dislike towards their new neighbor. To add to their dislike, he owned several dogs that Alan and Dorothy believed to be a nuisance to the neighborhood due to their constant barking and sheer number. They constantly called the police on Rob for various reasons and got into arguments with him.

Suddenly, there was an outbreak of rabies in the neighborhood and Alan and Dorothy decided to investigate. One morning, they don't see Richard's vehicle outside and decided to check on the living conditions of the dogs. They climbed a fence, and entered the yard and began looking around. They found several expensive pure-bred German shepherds in the backyard. They picked up two puppies and began walking away.

Unbeknownst to Alan and Dorothy, Richard was actually home and when he heard intruders, he confronted them with a shotgun. While pointing the gun at them, he accidentally fired a shot. Although, neither Alan or Dorothy got hit, the noise of the gunshot startled a nearby motorist, who swerved and landed in a ditch with multiple head wounds and died.

1. With what crimes, if any, can Alan reasonably be charged, and what defenses, if any, can he reasonably raise? Discuss.
2. With what crimes, if any, can Dorothy reasonably be charged, and what defenses, if any, can she reasonably raise? Discuss.
3. With what crimes, if any, can Richard reasonably be charged, and what defenses, if any, can he reasonably raise? Discuss.

Please utilize California Criminal Law and discuss any distinctions from Common Law and Model Penal Code.

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QUESTION 3

Dave and Abe, long term pals, decide to go to the local brewery for couple beers on a Saturday night. After having a few rounds, Dave sees his sister Jenny walking in with a couple of friends and they are seated at the bar. Soon thereafter, Rob, a local troublemaker, approaches Jenny and begins to annoy her. She tells him to go away several times, but he refuses to leave and continues to annoy her. Abe witnesses the exchange and tells Dave that Rob is harassing Jenny and she seems unhappy about it.

Dave confronts Rob and tells him to leave Jenny alone. Rob momentarily walks away, and Dave returns to his spot with Abe. Dave tells Abe that he is tired of watching someone like Rob constantly creating problems and something needs to be done about it. Dave is further aggravated that this time his sister is the target of Rob's bad behavior.

As a few hours pass, Dave and Abe continue drinking several beers and taking several shots of tequila. As soon as the bartender announces the last call, Dave sees Rob walking outside for a cigarette and him and Abe follow Rob outside. The trio exchange hostile words and a physical fight ensues. During the fight, Abe gets a glimpse of a metal object in Rob's waistband area. Quickly some of the patrons break up the fight and parties are separated.

Dave and Abe decide to follow Rob from the bar parking lot so they can finish what they started (the fight). They park on the street outside Rob's apartment as Rob pulls into his reserved parking spot. Rob sees the truck on the street and recognizes the driver and passenger as Dave and Abe. He approaches them yelling profanities. Dave gets out of the truck and charges angrily at Rob. As soon as Dave gets close, Rob reaches for his waistband. Abe, who is still sitting in the pickup truck, thinks Rob is reaching for a gun. Abe grabs a gun from the truck and shoots Rob.

The shot was from 15 feet away and hits Rob in the chest. The gun wound is serious and Abe calls an ambulance immediately once he's sees what he's done. Yet, due to complications caused by Covid and an overwhelmed/understaffed local hospital emergency room, Rob does not receive medical care for several hours and eventually succumbs to his injuries during surgery.

Several witnesses at the bar identified Dave as a 6-3" 220 lb. male, who exercises regularly with his friend Abe, a similarly built male, while Rob was a 5'5" 150 lb. male, a former alcoholic. BAC tests were conducted on all 3 by the police at the apartment complex and/or hospital and all three were over the legal limit of 0.08 and more.

After police arrest Dave and Abe, they inform the police that they were extremely intoxicated and don't have memory of their actions. During investigation, police discover that Rob had brass

knuckles and a belt buckle knife when he was taken to the hospital for the gunshot wound and had myriad of previous arrests and convictions for carrying concealed weapons.

1. With what crimes, if any, can Dave reasonably be charged, and what defenses, if any, can he reasonably raise? Discuss.
2. With what crimes, if any, can Abe reasonably be charged, and what defenses, if any, can he reasonably raise? Discuss.

Please utilize California Criminal Law and discuss any distinctions from Common Law and Model Penal Code.

QUIZ 1 OUTLINE

Battery: Both D's kidnapped, moved her to a warehouse.

Assault: Assault – lesser included, merges w/ battery.

Kidnapping: moved woman to van, drove to warehouse, took her into a room and locked.

HOMICIDE: DAVID

Killing of another human being, D beat woman to point of unconsciousness – death. Self defense – she punched him?

First Degree: Pre-meditation/deliberation: b/w every blow, he did threaten her few mins prior. Felony Murder: During Kidnapping?

Second Degree: Conscious disregard for human life, leaving unconsciousness in a parking lot bleeding..

Voluntary Manslaughter: She provoked him, wouldn't give info, punched him...he beat her up – crime of passion, then looked for medical aid when came out of rage.

Dan: Felony Murder/Accomplice

Self Defense: David is the aggressor, and he returned beating to death with a punch.

QUIZ 2 OUTLINE

DAN'S CRIMES and DOROTHY'S CRIMES

Conspiracy? Conspiring to do what though? Theft of puppies or Burglary? Trespass?

Aiding and abetting? Requires a completed crime, was theft completed? Trespass?

Burglary? Only found out about expensive dogs when inside?

Larceny by theft: taking away of puppies without Richard's consent.

Involuntary manslaughter?

Richard culpability: Homicide

None apply, too remote, quick discussion, but involuntary manslaughter? Road near by house, shotgun (noise) negligence discharge.

Causation: Richard would argue that the death is too remote of an incident for him negligently shooting on his property and near by motorist is startled to that extent. Plus, David and Dan, but for causation, wouldn't have shot, if not for them intruding on his property.

Self defense: intruders stealing his dogs, already don't like him, prior history of harassing behavior, but threatening?

Defense of habitation: Right to protect property with deadly force. Did he have to retreat.

QUIZ 3

Adam and Alan Crimes

Conspiracy Aiding and Abetting: need to teach him a lesson, walked out together, fought outside bar together, and followed him.

Battery: Brawl outside the bar

Assault: merges into battery

Homicide:

Causation: Shot or did negligent medical care break the chain, during the time of pandemic, is it foreseeable?

First Degree: After the fight, decided to follow him to teach him lesson, gun near by in the truck. Felony Murder?

Second Degree?

Voluntary Manslaughter: Rob was a nuisance, now bothering Adam's sister, getting into a fight outside the bar and then Rob came at the truck angrily.

Imperfect Self Defense

Defense of other: Rob known to carry weapons in waistband, Alan saw something in waistband earlier in the night, Rob was reaching for waist band.

Voluntary Intoxication: BAC was high for both. Defense to murder?

1)

David

Causation

*not a heading, the crime is
the heading, AR, MR & Causation
are part of the crime*

David (D) is the cause of the woman's (W) death if he is the actual and proximate cause of W's death. To be the actual cause of W's death, "but for" D's actions, W would not have died. Here, D beat W "very badly" until she passed out from the pain. She died due to blood loss and blunt force trauma to the head. But for D's beating, W would not have experienced the blunt force trauma that caused the excessive blood loss, therefore D was the actual cause of W's death. To be the proximate cause, there must be no superseding events in between D's act and W's death to break the causal chain. A superseding event is typically an independent intervening force; something that would have occurred regardless of D's action that then caused W's death. There is nothing in the fact pattern that suggests any outside force did anything to help cause W's death in between the beating and when D and Adam (A) dropped W off at the hospital. Therefore, there was no independent intervening force. The care provided at the hospital would be a dependent intervening force, but that does not break the causal chain unless it is unforeseeable; in this case something like gross negligence from the caregivers at the hospital. Nothing in the fact pattern suggests they provided gross negligent care, therefore this independent intervening force did also not break the causal chain. Because the causal chain was not broken, D is the proximate cause of W's death. Therefore, because D is the actual and proximate cause of W's death, D is the cause of W's death.

First Degree Murder

Battery / Assault / Kidnapping?

In California someone is guilty of first degree murder is the intentionally ^{kill} ~~kill~~ another human with premeditation and deliberation. One can be said to have intent to kill if they

either intend to kill someone or cause them great bodily injury (GBI). D intentionally beat W badly to the point she passed out, therefore D intended to cause GBI, satisfying the intent to kill element. A person acts with deliberation if they take time to think about their actions and still move forward with a killing. Here, D beat W after W hit D in the face. The fact pattern points to this beating occurring immediately after W hitting D in the face. Because this beating was an immediate reaction, D likely did not deliberate his actions. Premeditation is a person taking outward manifesting steps to prepare to commit a crime; in this case murder. In this case, D grabbed W, put her in a van, drove her to an abandoned warehouse, locked her in a room, and attempted to get information from W so D could send a ransom note. D would argue that he did not originally intend to kill W, while the district attorney (DA) would argue that the actual steps D took were those of someone that was going to kill W. A jury may find that D acted with premeditation, but would likely not find D acted with deliberation, and therefore not find him liable for first degree murder.

Felony Murder

Good job.

Criminally culpable.

A person is guilty of felony murder if they kill someone during the commission of an enumerated felony. The enumerated felonies relevant in this case are kidnapping and robbery. Kidnapping is intentionally restraining or confining another person against their will. Here, D confined W when he abducted W with his van, than continued to confine her by locking her in a room in an abandoned warehouse. Because of this, a jury would likely find D satisfied the elements of kidnapping. Robbery is taking the money or property of another from their presence by force or fear. Here, D attempted to ransom money from W's husband. Because whatever money W's husband would potentially give would also be the property of W due to their marriage, any money received from W's husband would also be W's money. D will argue that the money would have not have been taken from W's immediate presence. The DA will counter by saying that the

exchange of the money would need to be obtained from W's husband, thus constituting a robbery of W's husband. But in this case, ultimately the felony would be for attempted robbery. An attempt occurs when one takes a direct but ineffectual step to put a plan in to action that would cause the plan to be completed if not for circumstances outside the plan interrupting the completion of the crime. Here, the circumstances outside the crime where W's refusal to divulge the information needed to complete the robbery. A direct step is a direct and unambiguous attempt to commit a crime, in this case robbery. D did this when he abducted W and locked her in the warehouse. Because D was liable for two enumerated felonies, kidnapping and attempted robbery, D caused W's death as discussed above, and W's death was a natural and probable result of D's felonies, D would be liable for felony murder. *Because of D's prior list!*

Second Degree Murder

A person is liable for second degree murder if they intentionally kill another human without premeditation and deliberation. A person can also be found liable if they act with implied malice, also known as conscious disregard. As discussed above, D did not act with deliberation, but did act with the intent to cause GBI. It could also be argued that his severe beating of W after kidnapping her and locking her in a warehouse was done with conscious disregard. D may argue that he did not intend to cause GBI and only meant to cause her pain. This is a weak argument, as D beat W until she was unconscious. Here, D would likely be found liable for second degree murder. However, one can only be punished for one crime from a single act, and would be punished for first degree murder under the felony murder theory. *Very Good.*

Voluntary Manslaughter

In California a voluntary manslaughter occurs if someone intentionally kills another human during a sudden quarrel or heat of passion, or while using imperfect self defense.

A sudden quarrel is where the victim does an act of that would cause a reasonable person to react from passion, the defendant does act from passion, they do not have time to "cool off", and the defendant is not responsible for the event. In this case, while being hit in the face may be a sufficient act for a reasonable person to react with passion, and D did not have time to cool off, D was responsible for the events, and therefore would not be able to argue he should be punished for voluntary manslaughter instead of murder. D may try to argue the imperfect self defense theory as well. For imperfect self defense, D must have felt he was under threat of death or GBI, and that deadly force was necessary to protect himself from that threat. At least one of those thoughts must be unreasonable or a mistake. However, the fact pattern states that D beat W after he "became frustrated". Because D acted out of frustration, not an unreasonable fear, the imperfect self-defense theory would not apply. Therefore, voluntary manslaughter would not be appropriate.

Involuntary Manslaughter

→ *Very very good*

Involuntary manslaughter is the unintentional killing of another in a criminally negligent way. This would not apply because D intended to cause GBI.

Battery

Battery is when one intentionally causes a harmful or physical touching of another. Here, D intentionally caused a harmful or offensive touching when he grabbed W and threw her in the van. D also caused an intentional harmful touching when he beat W. Therefore, he would likely be found liable for at least two counts of battery.

Assault

Assault is when one performs an intentional act that would directly and probably cause the application of force on to another person. The defendant must also be aware of facts present that would lead a reasonable person to understand that the application of force

was a direct and probable result of their actions. The defendant must also be able to apply such force. As discussed in the battery section, D satisfied these elements at least twice. He also satisfied this element at least one other time when W said "better give me your husband's information or I'm going to kill you." Words are often not enough to constitute an act that would directly and probably cause the application of force to another, but given the context of the kidnapping, D would have understood that the application of force was a direct and probable result of his threat. Therefore, D would be guilty of assault on at least two or three counts.

Kidnapping

As discussed above, D would likely be found liable of kidnapping.

Adam

Conspiracy

Discussed here

A conspiracy is formed when two or more people agree to commit a crime, and one person makes an overt act towards committing that crime. A person must also have the intent to agree that at least one person in the conspiracy would commit the crime. Here, Adam (A) "decided to help" D kidnap and hold someone for ransom. A will argue that he initially said no because he did not want to hurt anyone, and only agreed when D said he would not hurt anybody. But, it was natural and probable that someone with anger issues, like D, would hurt someone during the course of a kidnapping and ransom situation, as force is needed to kidnap someone in the first place. For someone to be vicariously liable for a co-conspirator's crimes the crime must be a natural and probable result of the goal of the conspiracy (which was discussed above), and it must further the goal of the conspiracy. Here, because one of the goals of the conspiracy was to ransom W, D beating W to get information necessary for the ransom was to further the goal of the conspiracy.

Because of this, A would be vicariously liable for the crimes of kidnapping, battery, and assault.

Felony Murder

Under the felony murder theory (see supra for rule), A would be liable for felony murder if the murder occurred during his commission of a felony. Because A is vicariously liable for the enumerated felony of kidnapping, he would be vicariously liable for felony murder.

and the death was foreseeable
David & Adam engaged in
kidnapping together knowing
D had a temper and he
acted on it. Good job
82 + 10 = 92

2)

Alan and Dorothy

We will examine the conduct of Alan and Dorothy simultaneously, because the facts indicate that they acted together at all times. They would most likely each be charged separately for the same crimes.

Accomplice

Burglary

A prosecutor might charge Alan and Dorothy with burglary. A person is guilty of burglary when they enter an inhabited structure with the intent to commit a felony or theft therein. Here, Alan and Dorothy may have committed a theft (discussed more below), however the facts indicate that they climbed the fence after they "decided to check on the living conditions of the dogs." This negates the mens rea for burglary, so this would be a weak case for the prosecution. (Good)

Criminal Trespass

Alan and Dorothy could be charged with criminal trespass. They had no legal right to enter Richard's property. They voluntarily entered his property, with the necessary general intent. To this charge, they would raise a defense of necessity, which is an affirmative excuse defense. (They would need to prove by preponderance of evidence that they believed it was necessary to enter Richard's property to avert a greater harm. Here, they would point to the external signs that the dogs would constantly bark and that there was a great number of them as establishing a reasonable belief that there were unsafe conditions. After they learned of the rabies outbreak, they will argue, they actually and reasonably believed that checking on the living conditions of the dogs was necessary and that it was a lesser evil than the trespass. This is a compelling defense, however it depends on them proving this case to the trier of fact. (Not a bad)

Theft by Larceny ✓

Alan and Dorothy can both be charged with theft by larceny. This is a strong case for the prosecution. Theft by larceny requires that four elements be met:

- ✓ (1) voluntary wrongful taking of;
- ✓ (2) property known to belong to another;
- ✓ (3) with asportation (movement of the property) of any distance;
- ✓ (4) with the intent to permanently deprive the owner of the property or temporarily deprive the owner of the use or enjoyment of the property.

Value is not relevant to the actus reus or mens rea of theft by larceny, but actual value of the puppies could elevate the degree of larceny charged (misdemeanor or felony), depending on the actual value, and the fact that they were "expensive pure-bred German shepherds" is circumstantial evidence that bolsters the prosecution's case.

Here, the prosecution will argue that Alan and Dorothy recognized the value of the puppies, knew that the puppies belong to Richard, took the puppies without consent, moved them, with circumstances that imply the intent to permanently deprive or to temporarily deprive Richard of the use or enjoyment of the property.

They will have two arguments in defense. First, they will argue that the mens rea requirement of intent to deprive is not met. That they were concerned, and wanted to "investigate" if Richard's dogs were the cause of the rabies outbreak. They will also argue in defense that the taking was necessary because they believed that there were unsafe conditions for the dogs. Neither of these arguments is likely to succeed. There is nothing to suggest that either of them had any expertise regarding rabies, or any intent to take the

dogs out of concern for the neighborhood or the dogs themselves. Those may have been their motivations for entering the property, but they do not excuse theft.

✓ **Conspiracy to Commit Theft by Larceny**

The prosecution may also charge Alan and Dorothy with conspiracy to commit theft by larceny. A conspiracy is an agreement by two or more people to commit a crime or crimes. There must be a specific intent to enter into an agreement, as well as intent that the target crime be committed. The intent may be inferred by the actions of the parties when they work together towards a common purpose. Although Alan and Dorothy never had any express conversation or agreement, the prosecution could argue that when, together, they grabbed the puppies and began walking away, they were working in concert towards a mutual goal, thus establishing a conspiracy.

Richard

✓ **Second-Degree Murder**

In California, second-degree murder is either an intentional killing without premeditation or deliberation, or an implied malice killing with a conscious disregard for human life, reasonably foreseeable risk of death or great bodily injury (GBI), that is knowingly disregarded by the defendant. Here, the prosecution will argue that when Richard pointed his gun at Alan and Dorothy, he created a reasonably foreseeable risk of death or GBI, that he subjectively was aware of the risk, and that he acted with a conscious disregard. A conscious disregard murder is an unintentional killing. Therefore, Richard's defense that he "accidentally fired a shot" fails because it is not necessary that the defendant intend the killing. Richard's defense strategy instead will likely focus on two issues: voluntary act and causation.

Very Good

Voluntary Act in Death of Motorist

The first element of any crime is a voluntary act or omission of legal duty. A voluntary act is any movement, no matter how slight, that is initiated by the human mind, or will. An uncontrollable or involuntary movement, such as a seizure or heartbeat, is not a voluntary act. If there was no voluntary act, Richard was not guilty of any crime. Here, Richard will argue, the firing of the shot was accidental, and therefore not a voluntary act. This argument is weak on two points. First, the preceding act of pointing the loaded shotgun at Alan and Dorothy was itself a voluntary act. Second, there is nothing in the facts to indicate a total lack of voluntary movement. An accident could still very easily be caused by an intended movement, especially a slight one. The finder of fact will most likely determine that "accident" does not negate a voluntary act, with no additional facts to show otherwise.

Causation in Death of Motorist

To establish if Richard is the legal cause of the death of the motorist, the prosecution must prove beyond a reasonable doubt that Richard is the actual cause, a substantial cause, and the proximate cause of death. Clearly, under the but-for test, Richard is the actual cause. If Richard had not fired a shot, the motorist would not have swerved, and would not have died as they did. Richard is also a substantial factor, even though he is not the only cause of the motorist's death. The motorist swerving and landing in the ditch were also causes that occurred after Richard fired the shot. Because these occurred after the shot, they are intervening causes. However, both of these are dependent intervening causes. They each occurred as a direct result of Richard's action. At best, Richard could try to argue that the presence of the ditch was unforeseeable, and therefore a superseding cause. This is a very weak defense. However, the burden of proof is to the prosecution to prove beyond a reasonable doubt.

Involuntary Manslaughter

If Richard is able to establish that he did not have subjective knowledge of the risk, or if the prosecution fails to prove that he did have such knowledge beyond a reasonable doubt, then he could be convicted on the lesser charge of involuntary manslaughter. Involuntary manslaughter is a form of criminal negligence. When a defendant should be aware of the risk they are creating, but is not subjectively aware of the risk, the element of conscious disregard for implied malice is not met. This results in the reduction to involuntary manslaughter. As mentioned previously, this is not likely because a person who owns a shotgun and wields it in public almost certainly knows that there is a foreseeable risk of death or GBI.

on his property

In the charge of involuntary manslaughter, the prosecution could also point to the fact that Richard committed an assault when he pointed the gun at Alan and Dorothy. This inchoate offense is essentially an attempted battery (more on this below). Assault is a violent crime that is not enumerated in felony murder, therefore a killing or foreseeable accidental death that occurs during its course is involuntary manslaughter. Here, this element is strongly met and the prosecution has a compelling case for involuntary manslaughter--if conscious disregard element for second-degree murder is rejected by the trier of fact, Richard will almost certainly be convicted of involuntary manslaughter.

Defenses-Richard

Richard will argue defense of property, a complete justification defense. The prosecution must prove beyond a reasonable doubt that Richard did not act in defense of property. Defense of property requires that deadly force only be used in circumstances where there is an imminent invasion, or a reasonable belief of imminent serious harm. Force may be used in a fresh pursuit to recover stolen property, however the force must be proportional and reasonable. If the trier of fact determines that this was the case, then Richard could use this as a defense against the charge of Assault.

This is not as strong an argument in the second-degree murder and involuntary manslaughter charges for the death of the nearby motorist. The prosecution will argue that his actions were disproportionate to the level of risk. If the prosecution fails to prove this beyond a reasonable doubt, then this defense would succeed. The defense will also use this as an argument in support of negating the mens rea for conscious disregard / implied malice. That, rather than demonstrating a conscious disregard for human life, Richard's actions were the result of his reasonable belief that his property was being stolen, his land was being invaded, and he was within his rights to confront Alan and Dorothy armed with a gun. Where this argument breaks down is that Alan and Dorothy did nothing to demonstrate an imminent risk of serious harm to Richard or anyone else. So while the defense of property argument might succeed against Assault, it almost certainly fails with respect to Homicide.

Distinctions from Common Law and Model Penal Code

✓ Under Common Law, Richard would be charged with murder and the lesser offense of involuntary manslaughter. Common law makes no distinction between first- and second-degree murder. Here, the mens rea would be depraved heart/IMPLIED MALICE. This is a very similar argument to the second-degree murder, above, that there was a foreseeable risk of death or GBI by the use of the shotgun, and that Richard knowingly disregarded that risk when he pointed the shotgun at Alan and Dorothy. As with California, Common Law has an unlawful act provision for involuntary manslaughter, so the analysis is essentially the same.

Under Model Penal Code (MPC), Richard would be charged with murder, manslaughter, and negligent homicide. The mens rea for murder in MPC is to purposely or knowingly cause the death of another human being, or where there is conscious disregard for human life *with* circumstances that manifest extreme indifference to human life. While it is possible for the prosecution to argue that Richard manifested extreme indifference by

pointing a loaded shotgun at Alan and Dorothy, they would need to prove this beyond a reasonable doubt, which would be a difficult case to prove given the attendant circumstances.

Manslaughter in MPC is a conscious disregard killing *without* extreme indifference to human life. This is a similar argument as for second-degree murder, above, simply that the charge itself is the lesser charge of manslaughter under MPC. To the extent that the conscious disregard argument above holds up in California, it would so (or not, depending on the trier of fact) in MPC.

Negligent homicide in MPC is a gross deviation from the standard of care. Richard owed a basic standard of care to the people around him and he deviated from this standard in two ways. First, he was negligent in pointing a loaded shotgun at Alan and Dorothy. Second, criminal negligence may be inferred from the commission of a crime, in this case, assault.

Very well done!
90 + 8 = 98

3)

Abe

1. Second-Degree Murder (express malice - intentional w/o premeditation or deliberation)

Express malice second-degree murder is an intentional killing without premeditation and deliberation. Abe can reasonably be charged with this, because there was an intentional killing, as evidenced by his actions? He committed the voluntary act of pulling the gun and firing it at Rob, with the intent to kill. There is sufficient evidence to establish that the killing was not premeditated, and even if that was not the case here, Abe's voluntary intoxication would negate the mens rea for premeditation. It does not, however, negate the mens rea for second-degree murder. *Very Good*

Good

The prosecution will argue that the intent to kill is implied in Abe's actions. Abe's defense will argue in response that his actions following the shooting demonstrate that he did not have the intent to kill. Abe immediately called for an ambulance, and the facts show that he was reacting to the perceived danger of Rob reaching for a gun. In this argument, Abe's defense will push for a reduction to voluntary manslaughter.

Very Good

Under MPC, if this was a conscious disregard killing, it would be manslaughter. If it was an intentional killing, it could be a murder charge. This would depend on the intent element, as with California. Under Common Law, this would be murder as the mens rea for murder includes intent to cause GBI, which shooting someone demonstrates.

2. Voluntary Manslaughter (imperfect self-defense)

Voluntary manslaughter is an intentional act that leads to the death of a human being or fetus when done in imperfect self-defense or a sudden quarrel / heat of passion. Here, the heat of passion argument is fairly weak. Earlier in the evening, there was a quarrel, but

there was ample time after the quarrel for Abe to "cool off." When there is time for a cool off period, there is no longer the heat of passion. *Good*

A stronger argument for Abe's defense is that this was a situation of imperfect self-defense. First, Abe's defense will argue that it was the complete defense of perfect self-defense (more on this below). Imperfect self-defense is when the defendant believes he or another person is threatened with imminent death or GBI, that the immediate use of force is necessary, and that one or both of these beliefs is unreasonable or mistaken. If both beliefs are reasonable, then it is a perfect self-defense (or in this case, a complete defense of others). There are additional required elements that the use of force must be proportional, and that the defendant must not be the aggressor. Here, the use of force was proportional to Abe's *belief*, even if not objectively.

The prosecution will argue that Dave was the aggressor when he charged at Rob, and therefore this element of imperfect (or perfect) self-defense was not met. The defense will argue that Rob first approached them yelling profanities. Words do not reasonably put a person in fear, so this defense is weak. This is especially true where the facts include that Dave and Abe were both much larger than Rob, and more physically fit. Therefore, it is not reasonable that they would have felt threatened by Rob yelling and approaching them to justify Dave charging at Rob. Here, if Dave is found by the trier of fact to be the aggressor, then Abe's argument for perfect or imperfect self-defense fails.

Large people that are physically fit can assert SD
Under MPC, this would be a situation of Manslaughter: Extreme Mental or Emotional Disturbance. This would be easier to prove, as it would rely on showing that Abe was reasonably disturbed. The facts leading up to the shooting, and the perceived danger to Dave, could reasonably cause Abe to feel extreme emotional disturbance. *How - Elaborate*

Under Common Law, this would be a similar Voluntary Manslaughter argument.

3. Proximate Causation (ER complications) - *Doesn't need to be a heading. AR, MR, Cause-part*
Abe's defense for both second-degree murder and involuntary manslaughter will raise the issue of causation. Was Abe the proximate cause of Rob's death? First, Abe was the *analysis* actual, or but-for, cause of Rob's death, as clearly indicated by the fact that Rob would not have died had Abe not shot him. Next, the gunshot wound was obviously a substantial cause of Rob's death. For the third element of causation, proximate cause, there is less clarity. Here, there is a possible intervening cause, as the *foreseeable?* complications caused by Covid and the "overwhelmed/understaffed" situation in the hospital could have contributed to Rob's death according to the facts.

The prosecution will argue that this *Then every person in the hosp has that arg.* intervening cause is a dependent intervening cause. That it would not have even been an issue if not for the response to Abe's act, namely, the need for Rob to be at the hospital in the first place. Neither Covid nor staffing issues would have been a concern if Rob had not been shot. An independent intervening cause is a cause that would have happened even without the conduct of the defendant. The defense will argue that the situation in the hospital existed outside of Abe's conduct, and was already a situation. There is some ambiguity here that would likely come down to the trier of fact's determination of whether the intervening cause in question was Rob *going to a hospital that just so happened to have these problems, in which case it would be a dependent intervening cause, or if the intervening cause was the circumstances at the hospital themselves, which could be seen as an independent intervening, or superseding, cause, that breaks the chain of causation.*

If the circumstances at the hospital are determined to be a dependent cause, because they never would have been a concern if not for the prior act, then proximate cause is established. If the hospital's circumstances are determined to be an independent cause, then proximate cause is not established.

Conclusion: - Med. Disturb - Dep. Cause
- Therefore Foreseeable,

4. Voluntary Intoxication Defense (may negate specific intent mens rea but not for murder)

Abe will raise voluntary intoxication as a defense. This may negate specific intent mens rea, as here it eliminates the possibility of first-degree murder. However, voluntary intoxication is never a defense to second-degree murder, unless the defendant is unconscious.

Vol. Intox. defense is a valid defense to 1st degree SD.

5. Defense of Others (if Abe's belief of imminent death or GBI to Dave was reasonable)

If the finder of fact determines that Abe's belief that Dave was faced with an imminent threat of death or GBI was a reasonable belief, and that his belief that immediate use of force was necessary to prevent this harm was also reasonable, then there is some possibility that Abe could succeed on a defense of self-defense. This complete justification defense requires that the prosecution prove beyond a reasonable doubt that it did not apply.

→ Abe got a glimpse of shiny obj.

This defense would need to overcome one major obstacle, and it is the same problem that Abe will face in an argument for imperfect self-defense, and that is who was the aggressor in this situation. The prosecution will argue that when Dave charged at Rob, he was the aggressor, and therefore he was not entitled to self-defense. If Dave was not entitled to self-defense, then Abe's defense of others argument fails.

→ But Abe got a glimpse. Defense of other?

6. Battery (earlier fight)

Abe committed a battery when he engaged in a fight against Rob. In particular, the circumstances here that Dave and Abe were more physically fit and larger than Rob, plus it was two-on-one, increase the likelihood that this charge would hold. Abe would argue voluntary intoxication as a defense, and would need to prove that there was no intent to

cause a battery as a result of this intoxication. Given the facts at hand, this is a very weak defense.

Dave

1. Battery (the fight)

Like Abe, Dave would be charged with battery for the earlier fight. He would make the same argument for voluntary intoxication, and this would be a similarly weak argument.

2. Assault (charging at Rob)

When Dave charged at Rob, he likely committed an assault. The prosecution would charge him with this crime and point to the fact that Dave is large, physically fit, and had fought Rob earlier in the evening. This would place any reasonable person in apprehension of an imminent battery, when someone under these circumstances was charging at them. As with the earlier battery, voluntary intoxication would only work as a defense if Dave could prove that it negated his intent to cause apprehension or intent to cause an imminent battery.

3. Involuntary Manslaughter (unlawful act provision)

When Rob was shot, Dave was engaged in an unlawful act--assault. Involuntary manslaughter is an act of criminal negligence with an unlawful act provision. The death can be accidental in criminal negligence. Here, Dave will argue in his defense that the death was not foreseeable. However, this is a relatively weak argument because of the earlier altercations, and there is a good chance that he knew about the gun. The facts are silent on whose gun and whose vehicle, so if these belong to Abe, Dave will argue that he was completely unaware of the gun.

Under MPC, this would be a negligent homicide--a gross deviation from standard of care. Under Common Law, it would be involuntary manslaughter under a similar unlawful act provision.

Conclusion

Voluntary manslaughter and battery for Abe. Involuntary manslaughter, battery, and assault for Dave.

END OF EXAM

$$80 + 10 = 90$$