

① 35/40 "Model Answer"
Nice job!

1)

Question #1

Crimes of Sam

Issue: Did Sam commit a trespass when he crossed onto Vic's property

Rule: Trespass is the entry, or remaining on the property of another without the consent or permission of the owner.

Analysis: The facts state Sam entered crossed onto Vic's property. The facts do not indicate if Sam was a invited guest, which would negate his trespass, however the fact he remained on the Vic's property with the intent to commit a larceny. Additionally, Sam was entering on his property at night, which may not be a common hour of a normal visit. The prosecution would argue Sam's entry on Vic's property because was a trespass because he was not there for any business or visiting purpose which is indicating by his taking of a mushy apple.

Conclusion: Sam would likely be liable for criminal trespass.

Issue: Did Sam commit a larceny when he picked up the apple off Vic's property with the intent to eat it?

Rule: Larceny is the trespassory taking and carrying away (asportation), of personal property of another with the specific intent to permanently deprive.

Analysis: The facts state Sam was infact on Vic's property and no facts suggest he was an invited guest, therefore the prosecution will argue Sam was trespassing. Sam's taking of the mush apple is the personal property of Vic's, despite it's condition. The facts state Sam "picked up" the apple, indicating it was already fallen fruit, thus tangible personal property *Good*, belonging to Vic. The prosecution will argue the fact that Sam's "picking up" of the mushy apple is sufficient asportation to fulfill that element of Larceny, however the defense will likely argue Sam's "picking up" of the apple was not a sufficient asportation and thus he could not have fulfilled that element of larceny. The facts state the mushy apple is on Vic's property, thus the tangible real property of Vic's. The specific intent to permanently deprive Vic of the mushy apple will be fulfilled with the fact

Sam's specific intent was to eat the apple, and thus this act would permanently deprive Vic of his property interest.

Conclusion: Sam will have committed larceny.

Issue: Did Sam commit solicitation when he urged and encouraged Joe to pick apples for atop of Vic's apple tress?

Rule: Solicitation: The urging or encouraging of another to commit a criminal act.

Analysis: The facts state Sam "asked" Joe to pick some high fruit, which would normally constitute a solicitation to commit theft, however the fruit attached to Vic's tree is "real property" and thus not a larceny because of the lack of personal property element. *Good.*

Conclusion: Sam likely did commit solicitation. *More analysis. Be more definitive.*

Issue: Did Sam's jiggling the door to the shed constitute an attempted burglary? *curtledge?*

Rule: Attempt is the taking of a substantial step beyond mere preparation and into the zone of perpetration. *more rule here.*

Analysis: The facts state Sam "jiggled" the door, which the prosecution would argue is a substantial step beyond preparation and into the zone of preparation towards a burglary, however incomplete. The facts state Sam was with Joe at the time he entered the shed and thus the prosecution will argue Sam's attempt at entering through the door was his intent to follow Sam in. The defense will likely argue Sam's lack the intent to attempt the crime because he said "he really needed to use the outhouse, but would wait" indicating his intent was to enter to use the bathroom.

Conclusion: Sam likely did not commit an attempt. *Be conclusive.*

Issue: Did Sam's throwing of the apple shattering the front door window malicious mischief?

Rule: Malicious mischief is the malicious destruction of or damage to the property of another.

Analysis: The facts state Sam intentionally threw the apple "at the window in the front door" and thus shattering it. His conduct was the malicious destruction and damage of Vic' window.

Conclusion: Sam will be liable for malicious mischief.

Issue: Did Sam commit a burglary when he went into Vic's house and took the CD's?

Rule: Common Law Burglary is the trespassory breaking and entering the dwelling house of another at night with the intent to commit a felony therein.

Rule: Modern Law Burglary does not have the elements of breaking, it can be any structure, and it does not have to occur at night.

Analysis: The facts state Sam broke the window of the front door with the apple, thus the breaking occurred. Sam did infact respond to Harry's howl, however

once at the front door, he entered with the intent to recover CD he thought were his, as the facts show Sam stated he knew the CD's were there and that it was over there for Vic to repair. The breaking and entering took place at the dwelling house of another, Vic, and it occurred at night as the facts stated it was "moonlight". At common law, Sam will likely not be liable for burglary because at the time of his entry, he did not have the intent to commit the theft of the CD's. He thought they might be his to recover. Although at common law, larceny was infact a felony, he took the other CD while he was inside and the intent was developed inside the residence. However at modern law, Sam would likely be liable for a burglary as he entered with the intent to commit a felony, which would be the possession of the heroin. *More analysis, but good issue-spot.*

Conclusion: At common law, Sam is not liable for burglary.

Crimes of Joe

Issue: Did Joe commit a trespass on Vic's property?

Rule: See Trespass supra

Analysis: The facts state Joe was on Vic's property for the purpose of

"take Vic's apples" and not for another other lawful or privileged purpose. This was supported by the fact he had a empty sack in which to collect apples.

Conclusion: Joe is liable for trespass

Issue: Did Joe commit burglary of the shed, later identified as the outhouse?

Rule: Common Law Burglary, see supra

Analysis: The facts support Joe was already on Vic's property to take apple, thus he was trespassing. The facts do not indicate if Joe touched or moved the lose board to constitute a breaking, however the prosecution may argue a constructive breaking, whereas the defense would argue there was no breaking for purpose of common law burglary. Joe slide inside the shed which constituted a "entry" and this took place at night at indicating by the moonlight. The shed belongs to another, Vic, and that element is fulfilled. There is no indication of Joe's intent when entering the shed, however once inside he forms the intent to take a Sears catalog, however the papers with writing on them will likely be argued not to be personal property of value. Modernly, Joe would have committed a burglary only if it was established he entered with the intent to commit a felony or any other theft crime, his actual entering without the breaking would be sufficient and the shed would likely be within the curtilage of Vic's residence and be a structure would qualify.

Conclusion: Joe is not liable for burglary of the shed.

Issue: Did Joe commit a battery when he hit Harry with the apple?

Rule: A battery is the unlawful application of force upon another.

Analysis: The facts state Joe threw the apple through the window and the light was on inside the house. It was likely someone was inside. Joe's throwing of the apple and it striking Harry in the head caused an unlawful application of force to Harry. Joe had legal reason to do so.

Conclusion: Joe will be liable for battery.

Crimes of Harry

Issue: Is Harry's entry into Vic's residence a burglary?

Rule: See burglary supra

Analysis: The facts show Harry entered Vic's residence with the intent to find a warm place to sleep and not to commit a felony therein.

Conclusion: Harry will not be liable for burglary.

Issue: Is Harry liable for Larceny of the sardines?

Rule: Larceny, see supra

Analysis: The facts show Harry was inside Vic's residence. He was trespassing as he had no lawful ownership or tenancy to the residence. Harry took the sardines and carried them away by opening them and he had the specific intent to permanently deprive Vic of them although it was not needed for him to do so.

Conclusion: Harry is liable for larceny.

Mayhem as basis for burg. -2
Trespass -1

2) 21/30 This is also an excellent answer.
Dave's criminal liability Great overall job!!

Assault & Battery on Jim

Assault is the attempt to commit a battery, or the intent to cause apprehension of an immediate battery.

Battery is a trespassory, harmful touching of another.

When Dave grabbed a beer bottle and cracked it across Jim's face, this was without Jim's consent, thus it was trespassory. Since it tore a piece of Jim's nose and caused extreme bleeding, it was harmful.

Dave is guilty of assault and battery on Jim.

Mayhem on Jim

Mayhem is the malicious maiming of a body part of another.

When Jim hit Joe with the beer bottle a piece of Jim's nose tore off. This constitutes maiming of a body part of another.

Dave will be found guilty of mayhem on Jim.

Homicide of Jim

Homicide is the killing of one human being by another human being. Lawful homicide is excused or justified. Unlawful homicide is murder or manslaughter.

Dave's actions set a series of events into play that resulted in Jim's death, therefore Dave committed a homicide.

Was it murder?

Murder is killing of one human being by another with malice aforethought. Malice can be either expressed or implied. Express malice is the premeditated, deliberate intention to kill. Implied malice has 3 theories: 1) intent to cause great bodily injury (GBI) resulting in a homicide; 2) acting with willful and wanton disregard for human life resulting in a homicide; or 3) commission of a felony in attempt to, during which, or during escape from a homicide is committed (Felony-Murder rule). *Enumerated? - 2*

Although Dave screamed into the phone that he would kill Jim if he had to, the facts do not indicate that Dave had the expressed intent to murder Jim. He did not premeditate the crime such as lying in wait or administering poison. Instead he bumped into Jim accidentally at the 7-

11, several weeks later. Dave did not commit express malice murder.

When Dave hit Jim with the beer bottle his intention was to cause great bodily harm. Glass can be a dangerous weapon capable of ripping and tearing a person's flesh. And this is exactly what happened to Jim. Dave will claim that he did not have an intention to kill Jim, only to commit a battery. However the prosecution may be able to prove that Dave intended to cause GBI which resulted in homicide. *More analysis here - 1*

EXCEPT Additionally under the felony-murder rule, since Dave committed mayhem, on Jim, he was committing a felony. However, it appears that the crime of mayhem can not be boot strapped to the murder because it was part of the same crime, in the same way that battery can not be combined with homicide to prove felony-murder when it was part of the same criminal action (actus reus). Thus felony-murder will not apply.

Dave may be found guilty of causing great bodily injury that resulted in homicide, murder. However Dave will try to mitigate based on the intervening actions of the doctor (infra).

Is Dave guilty of manslaughter?

Manslaughter is a killing of another without malice. It can be either voluntary or involuntary. Voluntary manslaughter is an intentional killing in the heat of passion. It has four elements: 1) adequate provocation, 2) no cooling off period after the provocation, 3) a causal relationship between the provocation and the homicidal action, 4) heat of passion state of mind.

When Dave encountered Tina and Jim in the 7-11, looking tall, tan, young and lovely, he obviously got reminded about the injustice of losing his fiance to Jim, and Tina's cruel words that "Jim's muscled body will look much better than you with a tan." His anger is manifested because he "demanded" to speak to Tina. Instead of agreeing both Tina and Jim laughed at Dave. This obviously provocative response angered Dave to make his blood boil. In this passionate state, he did not take any time to cool off. Instead he looked for the nearest weapon he could find, a beer bottle, and cracked Jim across the face. Clearly the laughing was the provocation that supplied Dave's passion. Would a reasonable man confronted with his former fiance and her new lover in this situation react with a violent response? No, this response was beyond what a reasonable person would do. *Perhaps, but I think the jury would still get the manslaughter instruction. - 1*

Dave will claim that he did not kill Jim. IN fact his cracking Jim across the face resulted in a piece of Jim's nose being torn and bleeding. But these problems were solved when Tina rushed Jim to the hospital and the ER doctors administered a clotting agent that saved Jim's life.

However Jim's life was not saved, because when he had the procedure to restore his nose he had an adverse reaction to the medication which caused a seizure and his death. But for Dave's cracking Jim across the face, Jim would not have needed to have the surgery or the medication that caused the seizure. Thus Dave is the cause of Jim's death.

Dave will claim that the surgeon who administered the anaesthesia was to blame. It is foreseeable that a number of things could go wrong during surgery, including adverse reaction to medication. Thus Dave will be the proximate cause of Jim's death.

Dave will be found guilty of voluntary manslaughter. *Why is it a voluntary and not a murder under your analysis? - 3*

Is Dave guilty of Involuntary manslaughter (IM)?

In the event that Dave is able to mitigate based on the intervening action of the doctor, Dave

will be tried on Involuntary manslaughter. IM is unintentional homicide without malice. There are two types of IM: 1) homicide resulting from criminal negligence; and 2) homicide resulting from criminal actions that do not rise to the level of felony necessary for felony-murder (this is the misdemeanor-manslaughter rule.).

Based on the fact that Dave committed an assault and battery, both misdemeanors, that resulted in the homicide of Jim (supra), Dave will be found guilty of IM on the misdemeanor-manslaughter rule.

Malicious result of the misd?
- 1

Larceny of the beer

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

When Dave struck Jim across the face with the beer bottle, the bottle broke open and the beer contents spilled out. This constitutes a taking and carrying away of the beer from its original place on the shelf. Because the beer could not be returned to its spot, it was now broken, the owner, 7-11, was permanently deprived of its possession.

Dave will be found guilty of larceny.

Good that you spotted issue - Analysis a bit problematic. - 1

END OF EXAM