

Q2

1)

=====**Start of Answer #1 (1289 words)**=====

Crimes of Harold;

Burglary: The breaking and entering of an inhabited dwelling and nighttime to comitt a felony within.

95

Josie

Harold did in fact break and enter into Josie residence using tools he had. The facts stated it was at night so that element is met. However there are two elements that are not met. The first being the inhabited dwelling. Josie bought the property in january and didn't plan to move in till May. The house would not have been inhabited untill the move in date since it could still be considered vacant. The other issue is what was Harold's intent when he broke into the house? From the facts it seems that is intent was to turn on the power. He didn't intend to commit a felony with in therefore Harold has not committed a burlary at common law. on may say that because of him oving his belongings into the house he intended to stay there and take things such as the wine, but the facts don't go into his mind set it only says he went in to turn the power on. At modern Law he still would have not committed a burlary because of the missing intent to commit a felony. - not a valid arg at modern law.

Larceny: The trespassory taking and carrying away the personal property of another with intent to permanetly deprive:

Harold taking the wine from the basement was a tresspassory taking. For the act of carrying away any sufficent carrying away movement will suffice so taking of the wine and carrying it to the living room will constitute the carrying away element. The wine is assumed to belong to Josie, but it may have been left there by the previous owners. Even if it was abandoned by the preious owneres the fact th by Haold drinking the wine there would be no way josie could get it back. Harold has comitted larceny of the wine if it in fact belonged to Josie.

Any crimes regardingf Harold moving his clothes and entertainment center: No crime

seems to be committed here.

Battery of Josie: Battery is the unlawful application of force: Harold had no consent to grab Josie. His action of grabbing her without her consent is an unlawful application of force.

Assault of Josie; Assault is an attempted battery or the fear or apprehension of a battery: It didn't seem like Josie knew the battery was coming so I do not believe that an assault had occurred. Plus with the completion of the battery assault would merge into the charge of battery.

Rape of Josie: Rape is nonconsensual sexual intercourse by force or fear of another. The grabbing of Josie shows that Harold did not have consent to have sex with her. Force was the grabbing of her, and she could show fear even though she never cried out it could be said she was "frozen" by fear, or afraid of what Harold may have done if she cried out or tried to fight back. It is not a requirement that a victim of rape cries out or fights back. Harold may argue that she never said no. The argument would be defeated by the fact he applied force to her and she never gave consent. Another factor is Josie running out and telling her husband. One would think if it was consensual she would not have done that.

False pretenses: A material misrepresentation of a past or present fact to gain title by fraud.

The material misrepresentation was Harold branding the sheep and claiming that they were his. He sold them to Bob and got title of Bob's money. Harold is guilty of false pretenses.

Bob

Forgery: Falsifying

Harold falsely put his brand on the sheep that belonged to Josie. He can be guilty of forgery.

Crimes of Josie:

Larceny: (supra)

Josie took the sheep she believed belonged to her from Bob. Even though she believed the sheep belonged to her Bob was still in possession of it. Therefore she committed larceny because she took what was in possession of Bob.

Accessory to Robbery: Robbery is Larceny by force or fear. Even though her husband held Bob at gun point Josie is the one that took the sheep. She would be considered a principal in the 1st degree because she would be the main actor because she committed the larceny requirement of robbery.

Inconsistent argument

Crimes Of Bob:

Receiving stolen property: Knowingly receiving the stolen property of another. Bob did in fact receive the stolen property of Josie. If he knew or should have known that the sheep was stolen he will be guilty of receiving stolen property. If in good faith he believed that the property was in fact Harold's then he would not be held liable. In the facts it doesn't state that Bob knew that the sheep were Josie's, however the fact that Bob was Josie's neighbor he may have known that the sheep were really hers to begin with. It can be inferred that being her neighbor Bob had knowledge that Harold was temporarily living on the property and that the sheep belonged to the person who owned the property, therefore it can be said that Bob had reason to believe that the ewe that he purchased in fact belonged to Josie.

False imprisonment: The intentional physical restraint of another. Bob did block Josie from leaving but Josie had other means to leave. She had her own truck and could have driven around. For false imprisonment there needs to be no reasonable way of escape. Here there was. Bob is not guilty of false imprisonment.

Crimes of Fred:

Assault With a deadly weapon: (supra) with a weapon that can cause great bodily injury:

It is reasonable to say that pointing a gun at someone would cause sufficient fear and apprehension. A gun is a weapon that can cause great bodily injury including death. Fred is guilty of assault with a deadly weapon.

Accessory to Robbery: (Supra) Fred helped Josie commit the robbery of the sheep by holding a gun to Bob creating the fear element of robbery.

Attempted murder of Harold: Attempt is a positive step beyond preparation of a crime. Murder is a homicide with malice aforethought. Malice is the unexcusable, unjustifiable, person endangering state of mind.

Attempt is a specific intent crime. For Fred to be guilty of attempted murder he would have had to have express malice which is the unmitigated intent to kill. In the fact pattern here one could infer that Fred did have the intent to kill by pulling out a gun and shooting Harold. The homicide (killing of one human being by another) was frustrated by Harold not dying. The key is Fred's mind state on whether he intended to kill Harold or not. If it is shown that Fred did intend to kill Harold he will be guilty of attempted Murder. With the facts of the case Harold shows malice by pulling out his gun and shooting Harold with an intent to kill him. Fred is guilty of attempted murder.

Can Attempted Murder be changed to attempted voluntary manslaughter.: Vol. manslaughter is an intentional homicide without malice in the heat of passion with adequate provocation. Words alone are not adequate provocation. Given the fact that Fred knew that Harold raped his wife and now Harold was somewhat bragging about it can be argued to be sufficient provocation. There was an intent to kill Harold I do not believe there to be sufficient provocation. If Fred walked in on the rape that would be sufficient. And the fact that attempt is a specific intent crime one can not specifically attempt manslaughter.

Battery: (Supra) The gun was the instrument to comitt the battery. Fred is guilty of battery.

===== Start of Answer #2 (1233 words) =====

85

CRIMES OF SALLY:

Homicide: The unlawful killing (causing death) of another human being by another.

Actual cause:

Here, there is no death. Sally shot and wounded Frank in the arm, but did not kill him. Therefore, there is no actual cause of

death.

Proximate cause:

Although a death could be foreseeable under these circumstances, Sally did not kill Frank (see above). Therefore there is no proximate cause of a death.

Therefore, there is no homicide.

But if there were, there are three classifications of homicide:

1) Murder--killing of another with express or implied malice aforethought, 2) Voluntary Manslaughter--form of murder in which adequate provocation is shown to mitigate murder charge to manslaughter, Involuntary Manslaughter--negligently killing another, or killing another in commission or attempt of a malum in se misdemeanor.

Attempted Murder of George:

Attempt is a specific intent crime, meaning the actor must (1) specifically intend to commit the substantive crime (murder here) charged, (2) take a sufficient step towards its completion (three tests discussed below), and (3) but for a factual impossibility would have completed it. Further, the merger rule applies to all

attempts, meaning that one can not be convicted both of attempt and the substantive crime.

Steps towards completion are determined sufficient, depending on jurisdiction, by applying the following three tests:

Under **common law (CL) jurisdiction**, the actor must have taken the last necessary and possible step toward completion of the crime to be found guilty of attempt.

Under a some **modern law (ML) jurisdictions**, a "proximity test" is applied. If an act comes within reasonably close proximity of completion, and shows the actors "unequivicable intent" to complete the crime, then guilt for attempt may be found.

And lastly, under the **Model Penal Code (MPC) approach**, if an actor takes a "substantial step towards" completion, then he will be found guilty of attempt.

Murder is defined as the killing of another with malice aforethought. Although murder does not require an intentional mind state, attempt requires specific intent, in all instances.

Here, the second element to attempt is satisfied, the

"sufficient step toward killing" element, under all three tests presented above. Shooting at Goerge once, arguably is the last necessary step to killing a person; under the second (modern test), Sally's act of shooting at Goerge seems within reasonably close proximity sufficient to show her "unequivicable intent to kill;" and under the third test, it is also "a substantial step toward" completing a homicide, as arguably the only thing left to do is shoot again. **Therefore, the second element of attempt is satisfied.**

However, Sally will argue the first element to attempt, specific intent to kill, can not be proven beyond a reasonable doubt. On these facts, that is not necessarily true. While there is no explicit indication that Sally wanted to killed George, it may be inferred from the circumstances. Because Sally used a gun, pulled the trigger, and shot at Goerge (though she missed) it is a rebutable presumption showing Sally's intent to kill George. **Therefore, because we can infer Sally's specific intent to kill, the first element of attempt, too, is satisfied.**

Therefore, Sally is guilty of attempted murder.

**Attempted Murder Mitigated to Attempted Voluntary
Manslaughter (VMS):**

___ See attempt and VMS rules supra. Again, both attempt and voluntary manslaughter require specific intent to kill. Here, under CL, to have had adequate provocation to kill, Sally would have had to **objectively and subjectively** been **adequately provoked** by George's breaking in to her tent, and also **objectively and subjectively** not had **time to cool off.** Even if Sally was subjectively adequately provoked and did not cool off, it is still unreasonable for a person to kill another person under these circumstances. Therefore, Sally's attempted murder charge will not be mitigated to attempted VMS.

Attempted Murder of Frank: See attempt and Murder rules above. Here, there cannot be an attempted murder of Frank, because attempt requires specific intent. Thus because Sally only intended to shoot at George she cannot be guilty of attempted murder of Frank.

Attempted Aggravated Battery of George: See attempt. **Battery Using a deadly weapon causing Harmful or offensive touching by force. Shot at George intending to hurt him and missed. Therefore Sally is guilty.**

Transferred Intent Battery of Frank: Intent may be transferred from one attempted crime to another crime. See attempt. Battery Using a deadly weapon causing Harmful or offensive touching by force. Shot at George intending to hurt him and missed hit Frank. Therefore Sally is guilty.

Attempted Larceny of Fred's Wallet: Attempt supra. Larceny is defined as the (1) trespassory taking and (2) carrying away (asportation) of (3) another's personal property (4) with the specific intent to permanently deprive the owner of her possessory interest. Here, Sally, without consent tried taking his wallet. There was sufficient intent to steal because she movedreached for and touched it. **Therefore, Sally is guilty of Larceny of Fred's wallet.**

Attempted Larceny of Scott's Wallet: Attempt supra. Larceny is defined as the (1) trespassory taking and (2) carrying away (asportation) of (3) another's personal property (4) with the specific intent to permanently deprive the owner of her possessory interest. Here, Sally, without consent tried taking his wallet. There was sufficient intent to steal because she reached for it. **Therefore, Sally is guilty of Larceny of Scott's wallet.**

Attempted Robbery of Rob's Wallet: Attempt supra. Larceny by force or threat. Larceny is defined as the (1) trespassory taking and (2) carrying away (asportation) of (3) another's personal property (4) with the specific intent to permanently deprive the owner of her possessory interest. Here, Sally, without consent tried taking his wallet. There was sufficient intent to steal because she pulled a gun and demanded the Rob's wallet. **Therefore, Sally is guilty of attempted Robbery of Rob's wallet.**

CRIMES OF GEORGE:

Burglary of Sally's Tent: At common law burglary is defined as the (1) trespassory (2) breaking and (3) entering of a (4) dwelling place of another, (5) at night, with (6) specific intent to commit a felony therein (specific intent required upon crossing the threshold). **Modernly**, the following elements are **not** required in most jurisdictions: night, dwelling, or breaking.

Here, George did not have consent to enter the Sally's tent.

Therefore the trespassory element of burglary is satisfied. The breaking and entering elements are satisfied as well as George "ripped open," her tent (breaking) , and "went inside" (entry). Therefore the breaking and entering elements are satisfied. The tent is Sally's dwelling place as "everyone knew" she lived there as that's where all her stuff was. Therefore the dwelling element is satisfied. Further, the George acted at night. Therefore the night element is satisfied.

However, George will argue that he did not have specific intent to commit a felony when he entered Sally's tent.

The prosecution will counter by arguing that George must have had the intent and it can be inferred by the manner in which George acted: "he quickly went" inside and stole the canned goods. It appears he knew right where to go as "every knew" Sally had food there, and really there would be no reason to act with such haste if he weren't planning on stealing anything. **Therefore, because circumstantial evidence tends to prove George's felonious intent upon his entry into Sally's tent, he will be guilty of burglary.**

CRIMES OF FRED:

BATTERY. See supra. Here, he had a right to defend himself/property. Therefore, no battery.

===== End of Answer #2 =====
END OF EXAM