

1)

===== Start of Answer #1 (2498 words) =====

Crimes of Tom:

Did Tom commit a burglary when he entered Harry's garage?

At common law, a burglary is the trespassory breaking and entering of the dwelling house of another at night with the intent to commit a felony therein. Modernly, the elements of breaking, dwelling, and night are not necessary and felonies are expanded to include theft crimes.

Tom entered the garage to borrow the Mercedes. He was given permission to borrow the Mercedes by Harry. Thus the intent to commit a felony (or in our case a modern theft crime: larceny of the Chevy) did not arise until he was already inside the garage. Without that specific intent before entering the dwelling (garage) there is no burglary.

Tom would probably not be liable for burglary.

Did Tom commit a larceny when he drove off in the Chevy?

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

Harry had given permission for both Tom and Dick to borrow the Mercedes for a few days. However, there was no indication within the facts that Tom and Dick were allowed to take the Chevy. Thus, the taking was trespassory. The element of taking and carrying away was satisfied when the defendants "eased the old Chevy out of the garage" which is clearly an asportation. The facts indicate that Tom, Dick, and Harry may have been friends due to Harry's initial allowance of their borrowing of the Mercedes

Benz. The defense may be raised that they intended to bring the car back after a couple of days thus not meaning to permanently deprive Harry of the vehicle.

Tom would probably be found guilty of larceny.

Did Tom commit malicious mischief when he scraped the mirror off the Mercedes?

Malicious mischief is the intentional malicious destruction of the personal or real property of another.

Tom was "easing" the Chevy out of the garage when it scraped the mirror off the Mercedes. Thus there was little indication in the facts that Tom intended to maliciously destruct the vehicle.

Tom will probably not be guilty of malicious mischief.

Did Tom commit a battery against Harry?

Battery, at both common law (CL) and Modern law (ML) is the unlawful application of force against one's person.

Upon hearing the alarm, Harry rushed into his garage to discover Tom and Dick trespassing taking of his Chevy. Thus, he grabbed the door handle in an attempt to remove the men from the car. However, at the moment Tom accelerated, throwing Harry to the ground and causing his injuries (bleeding). Tom will argue that he never meant to cause Harry's injuries and that he himself did not cause them. But for Tom's acceleration, Harry would not be injured. Furthermore, the unlawful application of force was established as Tom accelerated, applying force and thus injuring Harry, through the implementation of the Chevy.

Tom will probably be found guilty of a Battery.

Did Tom commit an assault against Harry?

An assault at common law is an attempted battery. See battery supra. At modern law, assault is placing another individual in eminent fear of a battery.

When Tom drove directly at Harry, Harry was unaware because he "didn't see the car coming." However, he heard the screeching of the tires at the car roared down the street. The facts are unclear as to if Harry was in apprehension of another battery (being struck by the oncoming car driven by Tom). However, if the screeching did induce a apprehension in Harry, Tom may be liable or assault.

*Robbery? when Harry tries to
step then.*

Homicide of Joe:

Homicide is the taking of a life of human being from another human being. Homicide can be lawful or unlawful. Lawful homicide is justified and excused. Unlawful homicide can be murder or manslaughter. Murder is the intentional taking of a life with malice aforethought. Malice can be implied or express. Express malice murder is the express intent to kill. Implied malice can be implied in three ways. 1) the wanton and total disregard for human life. 2) the desire to inflict great bodily harm. 3) during the commission of a felony (felony murder rule.) Modernly, the felony must be inherently dangerous.

Manslaughter is the taking of a life without malice aforethought. Manslaughter can be either voluntary or involuntary. voluntary manslaughter is a homicide resulting from an imperfect self defense or a heat of passion. An imperfect self defense is a subjective belief the defendant is acting with a perfect defense although it is objectively unreasonable. A heat of passion result from adequate provocation, the defendant is actually provoked, there is no cooling off period, and the homicide is committed contemporaneously. Furthermore, manslaughter may result during the commission of a misdemeanor (misdemeanor manslaughter rule.) Modernly, non inherently dangerous

*True, but
not asked
for.*

*Good, but not
in relation
to be.*

felonies also apply.

The facts indicated that Tom veered away from the entrance of the freeway and struck Joe. This veering away indicated that there was no malice aforethought, and thus no murder. However, the misdemeanor manslaughter rule would apply in this case. As Tom was driving away after committing a larceny (misdemeanor) he struck Joe thus killing him.

Tom would probably be found guilty of manslaughter of Joe.

F/M During commission of a felony.

Did Tom commit larceny (grand theft above 400\$) of the 50,000 dollars worth of cocaine.

see larceny supra

According to the facts, Tom had no prior knowledge that the trunk of the Chevy contained the cocaine. Thus, Tom did not complete the crucial element of carrying away with intent to deprive, since there was no knowledge of the illicit substance and no ability to permanently deprive.

Tom would probably not be guilty of larceny of the cocaine.

*Value of contraband?
Recall the pharmacy case? Knowledge of contents of drawer were imputed.*

Crimes of Dick:

Did Dick commit larceny of the Chevy?

see larceny supra

An accomplice is one who assists in the completion of a crime.

Dick was an accomplice to the crime of larceny. He will argue his silence was not agreeing to the larceny however, he "jumped in the car" on his own will and will be liable

for the crimes both he and Tom commit together.

Did Dick commit a burglary?

See burglary supra

Dick entered the garage to borrow the Mercedes of which he was granted permission to do so. Similarly to Tom, the intent to steal the vehicle did not arise until he was already into the dwelling (garage). This crucial element of burglary has not been satisfied.

Dick would probably not be guilty of burglary.

Did Dick commit a battery of Harry?

See battery supra

When Dick's accomplice Tom accelerated this caused an unlawful application of force on Harry. As an accomplice, Dick would be liable for battery.

Dick will probably be found guilty of battery.

Did Dick commit a homicide of Joe?

See homicide supra. see manslaughter supra.

As an accomplice in the commission of a theft related offense, Dick would probably be found guilty of misdemeanor manslaughter under the misdemeanor manslaughter rule.

Did Dick commit grand theft of the 50,000 worth of cocaine?

see larceny (grand theft above 400\$) supra

Since Dick had no idea of the contents of the trunk, he cannot be found guilty of the taking and carrying away with the intent to permanently deprive. The specific intent is not met.

Same problem, supra

Dick would probably not be found guilty of grand theft.

Crimes of Harry:

Burglary of the Home of Tom and Dick:

See burglary supra.

At common law, there would need to be a breaking element. The partially open window would probably not satisfy the element. At modern law, the crossing of the threshold of the window would be breaking and entering. The dwelling is the home of both Tom and Dick. The facts indicate that this occurred just after midnight at night. Furthermore, as he ~~cases~~ ^{cases} the outside he is demonstrating the specific intent to enter and steal the harley. At common law ^{It would be more difficult.} if the reaching in with the hanger constituted a breaking, he would be guilty of burglary, otherwise that element had not been met. At modern law, Harry entered with the intent to commit a theft crime thus satisfying the elements.

Harry would probably be found guilty of a burglary.

Did Harry commit an assault of Dick?

see assault supra.

When Harry was confronted by Dick he became enraged and punched him in the nose. The facts are unclear if Dick was in a state of apprehension.

Dick may be liable for assault.

Did Harry commit battery of Harry?

See battery supra

Harry committed an unlawful touching when he punched Dick in the nose. Thus, he committed a battery.

Did Harry commit a homicide of Dick?

See homicide, see murder supra

By punching Dick in the nose, Harry demonstrated specific intent to cause great bodily harm. The punch did not cause the death of Dick, but the fall to the ground was a proximate cause in the natural sequence of events once Harry delivered the great bodily harm (blow to the nose) to Dick. Thus, Dick would probably be guilty of second degree murder. However, Harry may argue that the theft of his Chevy, as well as his cocaine, were adequate provocation. If it were established this would cause a reasonable person to become adequately provoked, Harry's crime may be mitigated to voluntary manslaughter.

State v. Bob

- Solicitation of Joe

Solicitation is intentionally inducing another person to commit a crime.

Burg. by entering house to solicit?

- Bob intends to commit Arson and invites Joe to commit the crime with him.

- Attempted Conspiracy with Joe to Commit Arson

Conspiracy is two or more people conspiring to commit a crime together with proof of an overt act towards the furtherance of the conspiracy.

Attempt is a substantial act towards the perpetration of an intended crime.

- Bob attempts to conspire with Joe to commit Arson and goes to Joe's house to ask for his help (the overt act).

- Attempted Arson of Rival Law Firm

At common law, Arson is the malicious burning of the dwelling house of another.

See definition of Attempt, supra.

Bob has gasoline and matches. He goes to the rival law firm's building with the intent to burn it down. This includes both intent and a substantial act towards perpetration.

- Assault and Battery and Manslaughter of Tammy

Assault is an attempt to commit a Battery.

Battery is the unlawful application of force to the person of another.

Voluntary Manslaughter is the unlawful killing of a human being without malice aforethought with sufficient provocation, sudden heat of passion, no time to cool, and a causal connection between the provocation, response, and death.

Misdemeanor Manslaughter is the unlawful killing of a human being without malice aforethought during the commission of a crime (not a felony) which a reasonably prudent person would not foresee as having a high risk of death.

Bob lunged at Tammy intending to push her down. This is evidence of Assault and Battery. He did not intend to kill her, so it is Manslaughter, without malice, not Murder.

Bob could be charged with Voluntary Manslaughter per his "heat of passion", or Involuntary Manslaughter as a Misdemeanor-Manslaughter. Felony Murder will probably not apply; the assault/battery will be merged into the homicide. *Adopted provocations.*

- Conspiracy with Joe to Burn Tammy's Body

See definition of Conspiracy, supra.

Bob comes to agreement with Joe to burn Tammy's body when Joe lights the match and Bob takes it back from him.

- Arson of Rival Law Firm (not intended)

See definition of Arson, supra.

Bob does burn down the rival law firm's building, but that was not his intention when he lit the match. He will be charged with Arson (under modern law, does not fit common law definition, not a dwelling house) because he went to the law firm intending to burn it down. But Bob will argue that it was not his intent when he lit the match.

Evidence will not show Bob is guilty of Arson. - *nat. & prob. consequences*

- Involuntary Manslaughter of Linda (not Felony Murder)

Involuntary Manslaughter is the unlawful killing of a human being without malice aforethought. Criminal Negligence is a lawful act not conducted with a reasonable standard of care, resulting in a high risk of death, which would be foreseeable to a reasonably prudent person. *Wrong premise regarding Arson. Can be Felony/Murder*

If Bob is not guilty of Arson, Linda's death will be charged as Involuntary

*But you pick it up
or the*

Manslaughter. If Bob is guilty of Arson, he (and Joe) will be guilty of 1st Degree Felony Murder for causing a death during the commission or attempt of an inherently dangerous felony, such as Arson.

State v. Joe

- Accessory After the Fact of Tammy's Body

A felony was committed (homicide of Tammy), but Joe does not know it was a homicide, he just thinks she is unconscious. He acts to help Bob hide evidence of the crime, but will not be guilty as an Accessory After the Fact because he is not aware of the felony. *Not so clear from the facts, but certainly arguable.*

- Conspiracy with Bob to Burn Tammy's Body
Conspiracy is two or more people conspiring to commit a crime together with proof of an overt act towards the furtherance of the conspiracy.

- Attempted 1st Degree Murder of Tammy

1st Degree Murder is the willful, deliberate, premeditated killing of a human being with malice aforethought.

Attempt is a substantial act towards the perpetration of an intended crime.

Joe deliberately helps Bob light Tammy's body on fire. This is premeditated murder. Joe does not throw the lit match on Tammy, but is guilty as a Principal because he Aids & Abets Bob - he knows of Bob's unlawful purpose, intends to commit or encourage the offense, and acts to aid in commission of the crime. However Joe is only guilty of Attempt because Tammy is already dead. This is in line with the CA (Rojas) line of cases where impossibility is not a defense to Attempt, unlike the NY (Jaffe) line of cases where Tammy's death would make it impossible for Joe to attempt to murder her, allowing impossibility as a defense.

- Arson of Rival Law Firm (not intended)

Joe is guilty as a coconspirator with Joe causing the fire because he participated in intentionally burning Tammy's body.

- Involuntary Manslaughter of Linda (not Felony Murder)

Involuntary Manslaughter is the unlawful killing of a human being without malice aforethought. Criminal Negligence is a lawful act not conducted with a reasonable standard of care, resulting in a high risk of death, which would be foreseeable to a reasonably prudent person.

Same as Bob, supra.

==== End of Answer #2 =====

END OF EXAM