

1) 34

===== Start of Answer #1 (1393 words) =====

People v. Sid

- Assault & Battery of Nancy
- Assault is an attempted Battery. Battery is the unlawful application of force to the person of another.
- Sid slipped a party drug into Nancy's drink without her knowledge. This was unlawful, and giving her a drug is considered an application of force.
- Rape of Nancy
- Rape is sexual intercourse with a person not his spouse by forcible compulsion that would overcome the resistance of a person of reasonable resolution.
- Sid had sexual intercourse with Nancy while she was semiconscious. He drugged her and did not have her consent. She was not able to resist.
- Although Nancy is 17 years old, this is not statutory rape because she did not consent.

• Defense: Intoxication

• Sid was "celebrating hard with many beers and cocaine," and may claim he was intoxicated when he raped Nancy. This may have been a valid defense if his intoxication was involuntary, but here it was voluntary. Sid's intoxication may be used to prove he was unable to actually form the intent to rape Nancy, but this is unlikely to be effective if he obtained the "party drug" ahead of time, which would indicate he formed the intent to rape Nancy before he became intoxicated.

Remember, rape is a general intent crime. Did she "consent" or did he enter a cons. hold? She was consenting. Good. But might be used to show reasonable belief in consent.

• Defense: Consent to sexual intercourse

• Nancy was mad when she discovered Sid had drugged her and had sex with her. She said she would have consented without the drugging. Sid's claim of Nancy's consent will not be a successful defense because Nancy did not consent to the sex they had.

Conspiracy with Nancy to commit Larceny against old man Jones

- Conspiracy is an agreement between two or more people to commit a crime, with an overt act towards the perpetration of the crime.
- Sid and Nancy discuss going to Jones' house to steal \$500, then go there together,

which is an overt act towards perpetration.

- Defense: Duress
- Nancy was demanding \$500 from Sid and threatening him with a knife. Sid will claim he had a reasonable belief of imminent harm from Nancy, and had no choice but to agree to steal the money. He probably was not reasonably afraid that Nancy would hurt him with the knife, and did have a choice not to say anything about Jones, so this defense will probably not be effective.
- Attempted Burglary of old man Jones
- At common law, Burglary was the trespassory breaking and entering of a dwelling house at night with the intent to commit a felony therein. Modernly, Burglary is the unlawful entry into or remaining in a building or other structure with the intent to commit a crime.
- An Attempt includes a substantial act towards the perpetration of an intended crime.
- Sid attempted to commit Burglary (under both common law and modern law) by intending and taking a substantial steps towards the unlawful breaking and entering of Jones' dwelling house, at night, with intent to commit Larceny therein. He did not commit Burglary because there was no actual breaking. Sid entered the open vestibule, and the door swung open before he touched it.
- Defense: Duress
- Sid may still claim he was trying to break into the house because Nancy was forcing him too, but he was probably not in a position of danger by the time he got to Jones' porch. It was not reasonable for him to believe he had to commit Burglary to avoid injury.

People v. Nancy

- Assault and Battery of Sid
- See definition of Assault and Battery, supra.
- Nancy exposed Sid to HIV, but not by choice. He raped her without her knowledge and consent, and exposed himself.
- Defense: Lack of Intent - *even general.*

~~GOOD~~ GOOD

- Nancy did not intentionally expose Sid to HIV. He had sex with her against her will. Although Sid contracted HIV from Nancy, she will probably not be held culpable for the Battery. • Defense: Consent

- Nancy cannot claim that Sid consented to contracting HIV because 1) he didn't know she had it, and 2) a victim cannot consent to great bodily harm such as contracting HIV. • Burglary and Attempted Robbery of Sid

- See definition of Burglary and Attempt, supra. Robbery is Larceny by force or fear. Larceny is the unlawful taking and carrying away the property of another with the intent to permanently deprive the owner of its possession.

- Nancy forced her way into Sid's motel room, pulled out a knife, and demanded \$500 for an abortion. This was Burglary because she forced her way in to his dwelling house at night with the intent of demanding \$500 from him at knifepoint. She was unable to commit the Robbery because Sid did not have \$500 for her to take. • Conspiracy with Sid to commit Larceny against old man Jones

- See definition of Conspiracy and Larceny, supra.

- Nancy says she'll wait outside while Sid gets the money, but she is still a co-conspirator, and will also be charged as a principal to the crime for Aiding & Abetting.

- Aiding & Abetting is knowing Sid's purpose, intending to encourage or commit the crime, and providing aid or advice in the commission of the crime. Nancy drove Sid to Jones' house.

Good spot of subtly hidden fact.

- Attempted Burglary of old man Jones

- See discussion under Sid, supra. Nancy is a co-conspirator to this crime and will be charge equally with Sid. • Assault & Battery of Sid; Attempted Homicide of Sid

- Definitions of Assault, Battery, and Attempt, supra. Homicide is the unlawful killing of a human being.

- As a co-conspirator in the attempted burglary of Jones, Nancy is responsible for the natural and probable consequences of the crime.

- Act of Omission by not helping the injured Sid

good. what's the rule? where's the duty?

- As a co-conspirator in the attempted burglary, Nancy was responsible for the peril Sid had been placed in by attempting the crime. She had a duty to help him and is responsible for the consequences to Sid. Sid did not die from his injuries, so Nancy's act of omission probably would have no consequences for her. *Is this a basis of duty?*

People v. Old Man Jones

- Attempted Homicide of Sid and Nancy
- Homicide is the unlawful killing of a human being. If anyone had been killed, malice could be implied because of the grave risk to human life associated with a trap gun, meaning Jones could be charged with Attempted Murder, which includes malice aforethought (an intent to kill or a "person-endangering" state of mind). But because no one was hit, and an attempted crime requires ^{good} express intent, this would be charged as Attempted Voluntary Manslaughter, unlawful killing without malice aforethought. The trap gun can be shown to be excessive force in honest but unreasonable self-defense.
- The death of Nancy's baby is not homicide because the baby has not been born. But the firing of the gun is an attempted homicide of Sid and Nancy.
- Defense: Defense of Self, Habitation, and Property
- Setting a trap gun is not an allowable method of self-defense and will not defend against the charge of attempted homicide.
- Assault & Battery of Sid; Attempted Homicide of Sid
- Jones grabs the gun and demands that Sid leave his home, then fires the gun, severing Sid's femoral artery. This will be charged as Attempted 2nd Degree Murder, with implied malice aforethought, because Jones is showing an extreme disregard for the value of human life by shooting at Sid. This may be mitigated to Attempted Voluntary Manslaughter as honest but unreasonable self-defense, or even Attempted *Quite a challenge.* Involuntary Manslaughter as Criminal Negligence, with a gross deviation from a reasonable standard of care. Or Self-Defense, described below, may be a complete defense, or justifiable attempted homicide.
- Defense: Defense of Self, Habitation, and

Property

- Sid was advancing on Jones, angry about the miscarriage. It was reasonable for Jones to believe that Sid meant to harm him. Jones was 80 years old while Sid was 18, but Sid did not have any weapons. Depending on the jurisdiction, Jones may have been obligated to retreat to the safety of his house, leaving Sid outside. Or if Jones was in his house and reasonably believed he was in danger of imminent death or great bodily harm from Sid, he may have been justified in "Standing His Ground" and responding with deadly force.

*Att. Malicious Mischief on door.
Extortion*

==== End of Answer #1 =====

2) 33

===== Start of Answer #2 (773 words) =====

People v. Don

- Possessing a firearm while on felony probation
- Don has an inoperable antique rifle as well as at least one other gun, and bullets.
- Defense: Mistake of Fact
- Don believes it's OK to have the inoperable rifle because his probation officer said so. However, Mistake of Fact is only a valid defense if the conduct would have been lawful if the belief was true. Here, Don's conduct would not have been lawful, because he also owns the other gun, and can easily swap the firing pin to enable the "inoperable" antique gun. Don may also argue that he mistakenly believed the gun wouldn't fire, even with the pin and bullets, but this is not a reasonable belief. If he didn't think the gun would work, why would he load it and fire it at Bo and Jake? Don is guilty of possessing a gun while on felony probation.
- Assault & Battery of Bo and Jake
- Assault is an attempted battery. Battery is the unlawful application of force to the person of another.
- Don pointed the rifle at Bo and Jake, ordering them to "Freeze!" When they ignored his demand, he intentionally shot each of them once.
- Homicide of Bo
- Homicide is the killing of a human being. Here Don would be charged with 2nd

Degree Express Malice Murder, which includes malice aforethought (intent to kill), but is not willful, deliberate, or premeditated. This would be mitigated to Voluntary Manslaughter as honest but unreasonable self-defense (defense of others). Felony Murder would apply if Don's possession of the guns is a felony. *? Enumerated? No.*

- One hour delay in ambulance. Bo dies the day after the shooting. The ambulance's delay is not a superseding event because it is not the sole cause of Bo's death. Don is responsible for the natural and probable consequences of his act and is guilty of Bo's homicide.

- Mayhem of Jake

- Mayhem is the malicious maiming or disfigurement of another.
- After the shooting, Jake's arm had to be amputated. Don is culpable for the natural and probable consequences of his action.

- Attempted Homicide of Jake *Malicious?*
- Don may also be charged with attempting to kill Jake. As with Bo, this could be mitigated to Voluntary Manslaughter as honest but unreasonable self-defense.

Defense: Intoxication

- Don was voluntarily intoxicated after drinking twelve beers. This will not be a defense to his crimes, but may prove that he didn't actually form specific intent to commit any crimes, e.g. to mitigate the murder of Bo to manslaughter.

- Defense: Insanity
- The M'Naghten Rule considers whether the defendant understood at the time of the offense 1) the nature and quality of his conduct, and 2) that his conduct was wrong (illegal).

- The 911 dispatcher heard some indication that Don may have believed he was a police officer or a soldier, and thought he was justified in taking action to stop Bo and Jake.

- This defense will probably not be effective. Don understood what he had done and was able to clearly articulate his interest in protecting his neighbors as a neighbor himself, not as an officer or soldier. The psychiatric report says Don takes every threat "very seriously," but this doesn't mean he doesn't understand the true nature of the threat, or that it is wrong to possess a gun or to shoot people.

- Defense: Defense of Others

- In Don's jurisdiction, a person need not retreat when protecting his own home so long

Dim. Capacity or "Actuality" ?

as he is not committing any wrong himself at the time. This statute would allow Don to use lethal force in defense of his own home ("Castle Doctrine") without requiring him to leave the home to seek safety. This statute does not extend to Don's defense of his neighbors or their homes. *Standing in-shoes? Unlawful poss. of gun as ex-felon?*

- Don was not reasonably protecting the lives or property of his neighbors when he shot Bo and Jake. They were already out of the neighbor's house and leaving the scene. There was no threat at the time of his attack. Don did not have a reasonable belief that deadly force was necessary to protect himself or others. *Good*

Don's defenses to his crimes are unlikely to justify his actions. It appears that he was legally sane at the time of the crimes, was illegally possessing a gun, and fired the gun at Bo and Jake without justification. His voluntary intoxication and intent to protect his neighbor will likely mitigate the homicide of Bo to Voluntary Manslaughter, with which the Assault and Battery will merge. Don is also guilty of Mayhem (and possibly Attempted Voluntary Manslaughter) of Jake.

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

END OF EXAM