

QUESTION 1
(One hour)

You are clerking for trial judge Damn. He tells you the following:

Defendant Jeff is on trial for killing his wife, Barbara. The evidence is that Jeff abused Barbara over the course of several years. The abuse took the form of private and public humiliation, screaming vile names at her, shoving and throwing her around the room and slapping her around as well. Witnesses saw her with an occasional black eye after some of these events, but there was no evidence that he ever injured her seriously enough to require medical attention.

Jeff testified in his own defense and admitted all this. But he testified as follows concerning the killing: He and Barbara were sharing a bottle of whiskey in their home. They both became pretty drunk and she began nagging at him about his lack of employment. Jeff began pushing and shoving her in the same ways he had in the past. But this time she went berserk. She ran into the kitchen, grabbed a long kitchen knife and came at him. He received a deep cut across his face. As she was about to stab a second time he grabbed the nearest weapon, a large iron frying pan, and brought it down on her head. He promptly fell into a drunken stupor for about 4 to 5 hours. When he awoke and saw his Barbara lying there with blood all over the place from her head and his face, he called an ambulance.

The prosecution introduced a psychologist who described the nature of the “battered women’s syndrome”. He stated that the deceased was a victim of that syndrome.

The ambulance medic found Barbara dead and Jeff with a large gash on his face. Medical testimony established that Barbara was not killed instantly by the blow, but died from bleeding which probably could have been stopped and her life saved if the ambulance had been promptly called.

Give Judge Damn your analysis of the all the crimes and defenses that should be instructed upon and your reasoning. You don’t need to give formal instructions, just tell me what the instructions should say and why.

QUESTION 2
(One hour)

Dana, 45 years old, sees a vase in the window of a store. Dana is convinced the vase is the one that was stolen from her house 3 years earlier. She enlists the aid of her nephew Cody, 20 years old but with the mental age of a 13 year old, to go with her to retrieve the vase. Dana also sees a framed photo through the store window that she thinks would look nice in her house, and she plans to steal it as well. Dana tells Cody to grab the photo while she repossesses her vase. After entering the store and picking up the vase, she yells to Cody to forget about the photo because it's not as attractive as she thought. He ignores his aunt and takes it anyway and they both head out the door. Policeman Paul is passing by the store and notices Dana and Cody sneaking out the door with their items. In order to stop them and recover what he believes are stolen goods, Paul shoots at Dana, but hits Cody whereupon the bullet passes through Cody and kills Boris, a passerby. Cody also dies from the wound.

Discuss both Dana's and Policeman Paul's criminal liability. Assume the vase was not the one stolen from Dana's house and actually looked nothing like it.