

### QUESTION ONE

Read the following fact pattern; then answer the question below.

After a football game, Cal invited friends to his house for a celebration. People outside his house were drinking beer; one friend, Stan, threw a beer can high in the air that fell onto Cal's head [reckless battery, possible assault if he saw it coming]. Cal then picked up a hockey stick [possible assault if he brandishes it] and used it to hit Stan on the head, causing him to collapse on the ground unconscious [battery]. Cal then went into his house and saw Susan going through the contents of Sally's purse [trespass, possible attempted larceny but weak at this point] in the bedroom [trespass unless open to guests] to remove a cigarette, [petit larceny] which she then lit [mal. mischief for destroying the cigarette, but weak]. Cal told Susan to leave, which she did after grabbing a sandwich and beer [larceny] from Cal's closeted basement refrigerator [trespass] for the drive to her home. Susan threw her cigarette in anger onto the front porch of the house, which caused only smoke damage [not arson; possible malicious mischief for the damage].

Stan was taken to the hospital unconscious. After a near death experience wherein he met his deceased grandparents, Stan was resuscitated, only to die a day later [implied malice murder, express malice or manslaughter weak]. When Stan's brother Mickey learned of Stan's death, Mickey sought out Cal, whom he found cleaning up from the party the next morning. Mickey ran up the front steps [trespass], intending to strike Cal [assault] but slipped on a beer can, hit his head and passed out. Cal pulled Mickey's body to the neighbor's bushes, [battery/ trespass to Mickey and trespass to neighbor] went through his pockets [further battery, weak, and/or trespass] and removed his wallet and car keys [larceny]. He drove Mickey's Audi to the nearest used car dealer on Auto Row, where he sold the Audi to Gretchen, [possible larceny by false pretense if title acquired, at least basic larceny] for half its book value, after admitting to Gretchen that Cal didn't own the Audi but had taken it from an enemy [receiving stolen property].

Gretchen put the car on the car lot with a sign describing the Audi as "new" rather than "used" [forgery, uttering]. Damon saw it and wrote a check for the full amount on an account he had closed two weeks before [larceny by trick or by false pretense if title transfers, possible ISF but weak]. Gretchen took the check, intending to cash it the next day, and gave title to Damon [is he aware the car is stolen?] who drove the Audi over the speed limit, missed a stop sign, and plowed into a neighboring front yard [trespass]. He emerged unhurt but, though it was midday, wanted a place of repose, so rang the front door bell and, receiving no answer, opened the unlocked door and entered the house in order to sleep [trespass, not burglary]. Once inside he saw a valuable Picasso painting which, after his nap, he removed from the wall and placed in the Audi's trunk, and then drove away from the scene [larceny]. In fact, the Picasso was an imitation, not an original.

What common law crimes have actually been committed by these folks? Structure your answer according to the names of the actors in chronological order as they appear. You do not need to repeat definitions of crimes once you have done so once; say "as defined above" or "supra." It is important that you complete this exam within the time allotted.

## QUESTION TWO

Sara is driving a convertible car with Bill with whom she has a legitimate common law marriage. They argue about their loyalties to each other. They stop to continue their argument. Sara insists that Bill exit the car, which he is forced to do after a push from her (maybe assault, certain battery). He lands on the roadway. Randy Rider, driving an oncoming car, strikes Bill as Bill wanders along the roadway [possibly no crime; possible negligence or battery but weak on such culpability; cf. text p. 160]. Sara sees the impact and sees Bill lying injured in the road but decides to drive away [omission; negative act; duty of care; implied malice, manslaughter? Cf. text, p. 523]. Randy also continues driving, leaving Bill on the travelled portion of the road. [as above, text p. 161]. Bystander Brad runs to help Bill but retreats when Foxy's oncoming car, driven 10 miles over the speed limit, roars down on them both, hits and mortally wounds Bill, [misdemeanor manslaughter/lack of due caution & circumspection] before damaging [mischief/trespass] and coming to rest against a neighbor's outhouse [trespass] with Foxy alive but dazed.

Sara drives into town and meets up with her friends Bonnie and Clyde. Sara invites them [solicitation] to think about a bank robbery, with a proposal that Sara will stay outside as a homeless-looking lookout while Bonnie and Clyde pull off the robbery inside [accessory but liability equal to principal]. After the robbery succeeds [robbery for all 3, not larceny], Sara flags down a passing taxi and the three of them talk loudly in the back seat about the bank's money in a paper sack. The cab driver overhears their conversation about the robbery and does nothing apart from delivering them to their destination, a hideout [does the driver knowingly intend to facilitate their escape & hiding?]

Bonnie then leaves the group and goes to a tavern where she engages in a physical altercation with Vee, a hated enemy of Bonnie and Clyde [battery, maybe assault]. Bonnie sees her friend Susie and yells to Susie "Kill Vee – she deserves it" [solicitation, possible accomplice liability?] Susie pulls a knife [assault?] provided by Bonnie [accessory?] and cuts off Vee's nose [battery, mayhem?]. She throws the nose onto the face of a customer, Jerry, whose eyeglasses are knocked off [battery]. Vee goes into the bathroom to wash the blood off her face.

Clyde, meanwhile, enters the bar, and sees Susie. He says to a customer, Jason, that he wants some protection because of the bar's reputation as a tough place. Jason says, "Yep, this can be a dangerous place. I'll loan you my six shooter, on condition you buy me a drink and return the gun to me at the bar's closing." (does Jason have mental state to assist in any specific crime?) An hour later, Clyde, partly drunk, engages in a fist fight [battery] with Murph [dies, so can't be charged] and uses the six shooter to strike him in the chest, [battery merging into homicide] causing Murph to fall against a rock grotto, strike his head and die two days later. [involuntary manslaughter? Voluntary sudden quarrel manslaughter with adequate provocation?]

You are a deputy prosecutor in the DA's office in common law Maryland in the 1920s. Discuss the potential charges you'd consider filing, with reasons for or against.