

1)

===== Start of Answer #1 (1701 words) =====

90%

State v. Ben

Larceny

Did Ben commit the crime of larceny when he hot-wired the truck from the dealership?

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

There are no facts provided that Ben would have been given permission to take the truck and trailer had their owner known about his actions, so his acts were trespassory. Ben took possession of the truck and trailer and drove them off the lot, thereby completing the elements of taking and carrying away. The truck and trailer were the personal property of the owner of the dealership, and each had value. Ben will try to argue that because he intended to return the truck and trailer to the dealership that his intent was not to permanently deprive the dealership. However, this argument would not work because the temporary taking from a store for one's personal use with the intent to return is rejected by the court the policy reason that stores would become society's wardrobes if this defense were valid.

Ben would be found guilty of the larceny of the truck and trailer from the dealership.

Burglary

Did Ben commit burglary of the dealership lot?

Burglary is the trespassory breaking and entering of the dwelling house of another in the nighttime with the intent to commit a felony therein. Modernly, the elements of

breaking, dwelling, and nighttime are unnecessary, and felony is extended to any theft-related offense.

Under both Common Law (CL) nor Modern Law (ML) the lot where the vehicles were kept is dubiously a dwelling or structure respectively, because both require four walls and a roof. If the lot were covered it would be sufficient for burglary at ML because Ben entered with the intent to steal a truck and trailer. At CL, someone would have to reside within a building within the same curtilage as the potentially-covered car lot.

Ben probably will not be found guilty of burglary based on the known facts.

Larceny

Did Ben commit larceny of the cow at the midnight auction?

See larceny supra.

Ben will argue that he did not commit larceny because the cow was abandoned property freely roaming the auction grounds. However, cows often have brands which are clues to ownership. Further, the presence of the cow at an auction would lead a reasonable person to believe that the rightful owner of the cow could be determined. Ben took the cow into his unlawful possession and carried it away from the auction grounds in his stolen trailer, with the intent of giving it to his wife and thereby permanently depriving it from its rightful owner. The cow has value and is therefore personal property.

Ben would be found guilty of the larceny of the cow from the midnight auction.

Burglary

Did Ben commit burglary of the feed store?

See burglary supra.

Ben broke the window of the feed store, walked into the store and retrieved an expensive cowbell that lay therein. The felony he intended to commit was the larceny of the expensive cowbell. Because the watchman lived on the site of the store, so long as the watchman's residence was within the same curtilage as the store and was not intersected by a public thoroughfare, this would meet the elements of burglary for CL. The event occurred immediately after the midnight auction.

Ben would be convicted of burglary under both ML and CL.

Malicious Mischief

Did Ben commit malicious mischief when he broke the window of the feed store?

Malicious mischief is the malicious destruction or damage of the property, real or personal, of another. Malice is the property-endangering state of mind. Malice can be express or implied.

Ben broke the window of the feed store after peeking through it with the intention of collecting an expensive cowbell on the other side of the window. In this way Ben's malice was expressed. The window was in fact broken, and was the real property of the store's owner.

Ben would be convicted of malicious mischief of the feed store's window.

Larceny

Did Ben commit larceny of the expensive cowbell?

See larceny supra.

Ben removed the cowbell from the store without paying for it, and placed it upon the cow he intended to give to his wife as a present. The taking was unconsented to, and the cowbell was the personal property of the store owner.

Ben would be convicted of larceny of the expensive cowbell.

State v. Annabell

Assault

Did Annabell (A) commit assault when she threw the cowbell at Ben?

Assault at ML is defined as placing another in fear or apprehension of a battery.

Assault at CL is an attempted battery. An attempt is an act beyond preparation into the zone of perpetration, or a substantial step towards the commission of a crime. Battery under both ML and CL is an unlawful application of force onto the body of another.

The throwing of the cowbell by A entered the zone of the perpetration of battery upon Ben, sufficient for CL, when it left her hand in the course of Ben. This is evidenced by Ben having to dodge the cowbell. Ben was in fear of being hit by the cowbell, also evidenced by his attempt to dodge it, sufficient for a CL assault. Had the cowbell hit Ben, it would have been a battery because Ben did not consent to being hit by the cowbell, and it would have been upon his body.

A would be convicted of the assault of Ben under both ML and CL.

Homicide

Did A commit homicide of Ben?

Homicide is the killing of one human being by another human being. Homicide can be lawful or unlawful. Lawful homicides are those which are excused or justified. Unlawful homicide can be murder or manslaughter. Murder is the killing of one human being by another human being with malice aforethought. Malice is the man-endangering state of mind. Malice can be expressed or implied. Express malice is the express intent to kill. Malice can be implied in three ways. First, by a wanton, willful, total and conscious disregard for the value of human life. Second, by the intent to cause great or serious bodily injury. Third, by a death proximate to the commission of a felony. Modernly, the felony must be inherently dangerous.

Ben's death was caused by slipping and hitting his head, an act caused by A's throwing of the cowbell at Ben. Ben's death was neither excused nor justified. A did not express an intent to cause the death of Ben when throwing the cowbell, so she has no expressed malice. Her malice could not be implied by a wanton disregard for the value of human life, because her actions did not rise to the level of disregard for any human life due to her actions. A's malice might be implied by an intent to cause serious bodily injury to Ben, depending on how heavy the expensive cowbell was, and if it might have caused great or serious bodily injury had it struck him. A was committing no felonies at the time of Ben's death, so her malice could not be implied in that way.

It is unlikely that A would be convicted of murder for Ben's death.

Unlawful homicide can also be manslaughter. Manslaughter can be voluntary or involuntary. Voluntary manslaughter (VM) is a homicide as the result of imperfect self-defense or heat of passion. Imperfect self-defense is either a subjective belief that one is acting in perfect self-defense but it is objectively unreasonable, or that one uses excessive force where the law would have allowed for lesser force. Heat of passion consists of legally adequate provocation, the defendant actually being provoked, no cooling-off period, and the homicide as a result of the provoked actions. Involuntary

manslaughter (IVM) is a homicide as the result of either a lawful act performed without due caution or circumspection, or of an unlawful act not amounting to a felony. Modernly, the unlawful act can include felonies that are not inherently dangerous in the abstract.

A was not acting in self-defense when she caused the death of Ben. A might have been acting out of the heat of passion when she threw the cowbell, because she was furious that a large animal was in her bedroom startling her awake. The act of starting someone with a large mammal in their bedroom may be legally adequate. There was no cooling-off period because she threw the cowbell immediately. Ben's death was an immediate result of A's provoked actions. A was not performing a lawful act. She was however performing an unlawful misdemeanor by assaulting Ben, causing his death.

A would be convicted of VM for Ben's death, and if not VM, then IVM.

Attempted Malicious Mischief

Did A commit attempted malicious mischief of the cow?

See attempt supra. See malicious mischief supra.

A shot at the cow, consummating a will for the cow--the personal property of another--to be destroyed.

A would be convicted of attempted malicious mischief of the cow.

Homicide

Did A commit homicide of her elderly neighbor?

See homicide supra. See murder and manslaughter supra.

The death of A's elderly neighbor was caused by the bullet fired from A's firearm. Thus, the neighbor was killed by A. Her act was neither excusable nor justifiable. She did not express an intent to kill the neighbor, so her malice was not express in this way. A's act of firing the weapon was not with the intent to cause great or serious bodily harm to the neighbor, so her malice could not be implied in this way. A's discharge of a weapon in public did not rise to the level of disconcert for the value of human life to imply malice because she was firing at the large animal in order to kill it. Thus, her malice could not be implied. The act of firing the weapon at the cow was not lawful, so her act would not be criminally negligent homicide. She was committing a misdemeanor when she fired at the cow, and the death was a proximate result.

A would be found guilty of IVM for the killing of her neighbor.

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

2)

===== **Start of Answer #2 (1256 words)** =====

State v. Xavier

85%

Attempted Murder

Did Xavier (X) commit attempted murder of Yana (Y) when he encouraged the flames up the bannister?

An attempt is an act beyond preparation into the zone of perpetration, or a significant step towards the commission of a crime. Homicide is the killing of one human being by another human being. Homicide can be lawful or unlawful. Lawful homicides are those which are excused or justified. Unlawful homicides can be murder or manslaughter. Murder is a homicide with malice aforethought. Malice is the man-endangering state of

mind. Malice can be express or implied. Express malice is the expressed intent to kill. Malice can be implied in three ways. First, by an intent to cause serious or great bodily injury. Second, by a wanton, willful, total and conscious disregard for the value of human life. Third, by the commission of a felony where death is the proximate result. Modernly, the felony must be inherently dangerous.

X's action of encouraging the flames towards where he believed Y to be sleeping was an act beyond preparation and into the zone of perpetration. Had Y died, it would not have been excused or justified. X expressed an intent to kill Y when he hoped to kill her by spreading the fire up the stairwell. Implied malice murder is a legal impossibility because an attempt requires specific intent. However, the attempted murder was made impossible by Y's absence from the upstairs bedroom. This makes X's attempted murder a factual impossibility, not absolving him of his crime. It was a factual impossibility and not a legal impossibility because had it not been for the unknown fact that Y was not in the bedroom, X would have otherwise committed an attempted murder.

X would be convicted of the attempted murder of Y.

Arson

Did X commit arson of his own home?

Arson is the malicious burning of the property of another or one's own house. Malice is the home-endangering state of mind. Malice can be express or implied.

X committed arson of his own home when he encouraged the fire up the bannister if the fire he directly caused resulted in more than the charring of the paint on the walls. X would argue that he did not commit arson because his house was his own property, but it is also arson to burn one's own home.

It is likely that X would be found guilty of arson of his own home.

Homicide

Did X commit homicide by killing Y?

See homicide supra. See murder supra.

Y died as a result of the blow from the fire extinguisher that X was swinging at her. This killing was neither justified nor excusable. X had previously expressed the intent to kill Y when he encouraged the fire up the stairwell, however when he saw her alive he was shocked. It is unclear what X's intent was when he hit Y with the fire extinguisher, but because he had expressed an intent to kill Y it might be found that his malice was expressed in this situation. If it is not found that X swinging the fire extinguisher at Y was with express malice, it will not be found that he expressed the intent to cause her great or seriously bodily harm. Nor did his actions rise to the level of abandon to demonstrate a total and conscious disregard for the value of human life. However, because X has not reached a *res gestae* after his arson of his own house, his malice could at least be implied by the death proximate to his prior related felony of arson.

X would be convicted of murder under the theory of either express malice, or a death proximate to the commission of a felony.

Did X commit manslaughter?

Manslaughter can be either voluntary or involuntary. Voluntary manslaughter (VM) is a homicide in imperfect self-defense or the heat of passion. Imperfect self-defense is either the subjective belief that one is acting in perfect self-defense but it is objectively unreasonable to believe so, or the use of excessive force in self-defense where the law would have allowed for lesser force to have been used. Involuntary manslaughter (IVM) is a homicide caused by either a lawful act performed without due caution or

circumspection, or an unlawful act not amounting to a felony.

X was not defending himself from Y when he struck and killed her, so he was not acting in self-defense. Nor was he acting out of passion provoked by Y, so X did not commit VM. X's act of swinging the fire extinguisher at Y was not lawful, but it would have been an assault and battery--misdemeanors proximate to the death of Y. The Wilson doctrine prevents assault from being used to demonstrate only implied malice for the purpose of the Felony Murder Rule.

X could be convicted of VM for killing Y.

State v. Y

Arson

Did Y commit arson when she burned her home?

See arson supra.

Y acted with abandon when she lit the large fire in her fireplace using a large bottle of lighter fluid. Although she did not express the intent to burn her house, the level of carelessness with which she acted could imply malice towards her home. The arson was completed when her sofa was engulfed in flames.

Y would be convicted of the arson of her own home.

Attempted Larceny

Did Y commit attempted larceny when she entered her neighbor's garage?

Larceny is the trespassory taking and carrying away of the property of another with the intent to permanently deprive. See attempt supra.

Y passed into the zone of perpetration when she entered the garage. If she intended to return the fire extinguisher after using it, she would not be convicted of larceny. Because the fire was temporary, it can be safely assumed that she intended to return the fire extinguisher.

Y would not be found guilty of attempted larceny.

Burglary

Did Y commit burglary of her neighbor's garage?

Burglary is the trespassory breaking and entering of the dwelling house of another at nighttime with the intent to commit a felony therein. Modernly, the elements of breaking, dwelling, and nighttime are unnecessary, while the felony is extended to any theft-related offense.

Y's intent upon entering the garage was to obtain a fire extinguisher. If she would be found guilty of attempted larceny she could also be found guilty of burglary. But because she lacked the felonious intent due to her probable intent to return what she found, she did not meet the necessary elements of burglary.

Y would not be found guilty of burglary.

Larceny

Did Y commit larceny of her neighbor's screw drivers?

See larceny supra.

Y completed the elements of larceny when she removed the screw drivers from her neighbor's garage with the intent of giving them permanently to X as a gift.

Y would be found guilty of larceny of the screw drivers.

Mayhem

-
Did Y commit mayhem by burning X's arm?

Mayhem is the malicious severing of the limb or body part of another. Malice can be express or implied. Malice is the body-endangering state of mind.

Y lacked the foresight that X would enter the house and attempt to extinguish the fire. In this way, her malice could not be implied because it could only be expected that X would see the fire, not be burned by it. Despite the subsequent amputation of X's arm, Y did

Y would not be found guilty of mayhem for the amputation of X's arm.

=====
=====
=====
=====
=====
=====
END OF EXAM