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===== Start of Answer #1 (2651 words) =====

Criminal Law essay exam.

Professor Ravitch.

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Question 1

People vs. Zoe

Zoe picks apples and offers them to horses.

Larceny.

Larceny is the trespassory taking and carrying away of the personal property of another with the intent to permanently deprive the rightful possessor. Trespassory taking and carrying away requires obtaining possession without consent and asportation. Personal property of another is property, other than real property, that has inherent value. The intent to permanently deprive the rightful possessor must exist at the time of the taking. Here, Zoe has picked apples from a tree intending to feed them to the horses in the field. It seems likely that she intended to permanently deprive the owner as she was going to feed them to the horses. There does not seem to be any asportation. Also, part of the real property (in this case apples growing on a tree) must be severed from the land before they can be personal property. The owner must have time to take possession. Zoe has not committed larceny.

Zoe rides horse.

Larceny - defined supra.

People vs. Josh

Josh picks up apples from the ground and puts them in his pocket.

Larceny - defined supra.

Josh obtained possession and placed the apples in his pocket. He has significantly moved them from where he found them. The apples are no longer part of the land as they had been previously severed and were on the ground. Therefore, they became the personal property of the owner of the land. We can infer from the fact that he placed them in his pockets that he intended to completely deprive the owner of possession. He has likely committed larceny.

Josh rides horse.

Larceny - defined supra.

Josh knocks Trevor down.

Battery.

Battery is the unlawful application of force against another. The accused must intend to make contact with the body of another and actually make the intended contact. Here we can infer that knocking Trevor to the ground was an intentional act, and that it was done by applying force to Trevor's person.

Josh takes ATV.

Larceny - defined supra.

Josh obtained possession without the owner's consent and he drove away on the ATV, satisfying the first two elements of larceny. Trevor's ATV qualifies as personal property of another. Where the issue is unclear is what Josh's intent was at the time he took the ATV. To be guilty of larceny he has to have intended to permanently deprive Trevor of possession - he need not intend to keep it for himself. Since he later left the ATV, with the key in the ignition, it would be hard to conclude that he had the necessary intent. Although abandoning property can satisfy the intent element, it only does so if the abandonment is done in a way that makes recovery by the owner unlikely. Here it seems likely that the owner would be able to recover it from the hospital. This is likely not larceny.

Josh rides horse.

Larceny - defined supra.

People vs. Dan.

Dan rents out horses and field to Josh and Zoe.

False pretenses.

False pretenses is fraudulently obtaining title to the personal property of another by making false representations of a material fact. The accused must obtain title and not just possession. The item must be personal property as opposed to real property. The accused must represent as true a past or present fact that is in reality untrue. The false fact must also be one material to the transaction. Here Dan implies that he has the right to rent out the use of the horses when he in fact had no such right. When Josh and Zoe gave him money, their personal property, they intended to transfer title to him. The right to rent out the horses was material to this transaction. He has likely committed false pretenses.

Dan in the barn.

Burglary.

Common law burglary is breaking and entering the dwelling house of another, at night, with the intent to commit a felony therein. Breaking can be actual or constructive. Opening a closed window or door is sufficient. Entering can be accomplished by any crossing of the threshold by the accused or by an instrument in his control. Night is defined as either a period between sunset and sunrise when there is insufficient sunlight to make out a persons face or as the period between and hour after sunset and an hour before dawn. The dwelling house of another is a building where a person lays there head at night, or within the curtilage of said building. The intent to commit a common law felony must exist at the time of the entry. Here we have evidence of breaking from the broken deadbolt Trevor found in the door. Dan was found inside, where he had no permission to be. Although this building was a barn, Trevor was using it as his home. There is no indication that this occurred at night Dan's intent when he entered is also unclear. He was looking through drawers and emailing himself Trevor's

financial information, so the intent to commit larceny seems likely. The financial information would not meet the personal property element of larceny as it lacks inherent value, but if Dan had intended to find take something that was personal property when he made entry, the felonious intent of burglary would be met. A common law burglary may not have been committed.

At modern law, the breaking, nighttime, and dwelling house requirements are often eliminated. Even if this occurred during the day, and Trevor had not been using the barn as his home, a modern law burglary may have been committed.

Dan throws marijuana cigarette in the hay.

Arson.

Arson is the malicious burning of the dwelling house of another. If the burning is intentional, it is malicious. The dwelling house of another requirement is the same as in burglary, define supra. There must be some actual burning, however minimal. Dan's intent to burn is implied by his act - throwing a, presumably, lit cigarette into hay. The barn was a dwelling house because it was being used by Trevor as his home. The barn was on fire when police arrive. Arson has been committed.

People vs. Trevor.

Trevor shoots Josh in the leg.

Battery - defined supra.

Trevor intentional shot his gun toward Josh and struck him in the leg. Battery can be committed by the use of an

Trevor points gun at Dan.

Assault.

An assault at common law is an attempted battery. It can also be intentionally putting another in fear of an imminent battery. At modern law the accused have the present ability to carry out a battery on the victim. Here we can infer that Trevor intended Dan to

believe he would shoot him if he did not leave. There is nothing to suggest he lacked the ability to shoot Dan. Under either common law or modern law, it appears an assault has been committed.

Question 2

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People vs. Val.

Val finds and takes ring.

Larceny - defined supra.

Val found what appears to be lost property. When she picked it up and took possession of it, she did so without consent. She put it in her pocket and carried it away. The ring qualifies as personal property of another. It is also inferrible that she intended to permanently deprive the owner by the fact she chose not to take any steps to find the owner. Special rules apply to found property. To be larceny, the property must be such that it is unlikely the true owner could be found. The initials on the ring and the fact that it was between houses makes it seem likely the owner could be found, as suggested by Bert. Val chose not to even check the nearby houses, further evidencing her intent to permanently deprive the owner.

People vs Bert

Bert takes ring from Val's pocket.

Larceny - defined supra.

Larceny is a crime against possession, not ownership. Even if Val herself had stolen the ring moments before, Bert could be guilty of larceny if the elements are met. His taking of the ring was trespassory in that he obtained possession without consent. He put the ring in his pocket and carried it away with him, meeting the asportation element. The ring belonged to another and, as it has inherent value, it is personal property. His intent, however, will have to established before he can be found guilty. It could be that he intended to go back and search for the owner, in which case there was no larceny. If he

intended to keep it, sell it, or even just throw it away elsewhere, there is a larceny.

Bert causes George's death.

Homicide.

Homicide is the killing of a human being by another. Bert was driving the car that struck George's car, killing George. Homicide has been committed by Bert.

Murder.

Murder is homicide committed with malice. Malice can be express or implied. It is express when an intent to kill has been expressed. It can be implied in three ways: by an intent to inflict serious bodily injury; by reckless disregard for the value of human life under the depraved heart theory; and by the commission or attempted commission of a felony (only inherently dangerous felonies under modern law) under the felony-murder doctrine. We have already established that Bert was the cause of George dying. There was no express intention to kill. If malice is to be implied, it must be under one of the other two theories. To decide if someone has acted in reckless disregard to the value of human life, we must take an objective look at the circumstances. Bert drank for hours at the pub before driving and continued to drink rum from his flask as he drove. Instead of focusing on the task of driving he was tearing at Val's clothes. It would probably be determined that a reasonable person would recognize the unjustifiably substantial certainty that some could die as a result of these actions. To make matters worse, Bert had already been convicted of DUI and had likely been educated on the extreme danger of driving drunk. Since Bert acted in complete disregard to the very substantial risk to human life he was created, malice could be fairly implied and he could be found guilty of malice murder. He acted in a way that was highly likely to result in death without a second thought.

Bert may also be found guilty of murder under the felony-murder doctrine if, as the facts suggest, he was attempting to rape Val in the car when he struck and killed George. Under the doctrine the death must occur during the commission or attempted commission of a felony (inherently dangerous at modern law). Rape is both a common law felony and an inherently dangerous one. To have made an attempt, Bert must have

had formed the intent to commit the underlying crime and taken a substantial step towards its commission. Later evidence supports the conclusion that Bert intended to rape Val, but it is not clear if the intent had been formed at this point. If it had been formed, ripping into Val's clothing seems to be a very substantial step toward committing rape.

Berts offers (and uses?) ring as collateral.

False pretenses or larceny - defined supra.

Bert represented as truth that the ring was his and he had the right to offer it as collateral, a false representation of a present material fact. However, it is not clear that he obtained title to the bond posted on his behalf. It also does not seem to obtained possession to the bond.

Bert goes into Val's house.

Burglary - defined supra.

The breaking required for common law burglary can be actual or constructive. There is constrictive breaking when entry is effected by fraud or by trick. Bert rang the doorbell and then hid, waiting for Val to open the door and step away from it as she looked to see who it was. He slipped in the door behind her, thereby committing a constructing breaking and an entry into the house. Val lives here so it is the dwelling house of another. It was "still dark" when he entered, so it is likely the common law nighttime requirement, defined supra, is met. Bert's actions upon entry are evidence of the intent he had in mind when he broke and entered. He grabs her and begins to drag her into her bedroom, likely to continue the rape he had attempted earlier. All the elements of a common law and modern law burglary appear to have been met.

Attempted Rape. Rape is carnal knowledge of a woman without her consent. To be guilty of an attempt, the accused must have formed the specific intent to commit the underlying crime and have taken a substantial step toward the commission of the intended crime. Neither factual nor legal impossibility seem to be an issue here. Since Bert was interrupted from completed whatever he intended to do, we must look at this

as an attempt. We can infer his having formed the intent to rape by his present and earlier actions. Earlier in the car he had begun to tear into Val's clothing. Now he has burglarized her home, grabbed her by surprise, and begun to drag her into her room. These facts appear to be evidence of both his intent to commit rape and of having taken a very substantial step toward the commission of the crime. These acts in Val's house were not preparatory, he was begin the rape.

False Imprisonment.

False imprisonment is the unlawful restriction of the liberty of another by force or threat, whereby the victim is forced to stay or to go where they do not wish. Bert intended to force Val into her bedroom. He used force to when he grabbed her and tried to drag her.

People vs Seth.

Seth tries to shoot Bert.

Assault - defined supra.

Seth intended to shoot Bert with a gun. Battery can be committed with an instrument, such as a bullet. Since he had the requisite intent of applying force to Bert's person and took a substantial step toward doing so, he attempted (define below) battery and hence and assault.

Seth shoots Val by accident.

Homicide - defined supra. Seth shot his gun, striking and killing Val with the bullet. He has committed homicide.

Murder - defined supra. Malice can be implied by an intention to inflict serious bodily injury. The situation here is strange in that Seth clearly had an intention to inflict serious bodily injury, just not on the person that was actually shot. He acted with implied malice and his act directly caused Val's death.

Manslaughter.

Manslaughter is homicide committed without malice and is either intentional or

unintentional. Voluntary manslaughter is when a person intends to kill, but the intention is the result of heat of passion arising out of severe provocation. Involuntary manslaughter is an unintentional killing as the result of an unlawful act not amounting to a felony, or as the result of a lawful act done without due caution. Seth did not intend to kill Val so this could only be involuntary manslaughter. It could be found under either theory. Seth's attempted battery, defined supra, could be the unlawful act not amounting to a felony. He intended to commit battery on Seth and Val died as a result. It could also be that Seth's attempted battery on Bert was lawful as it was done in defense of another. If this is the case, he can still be guilty if he acted without due caution. Shooting at two people struggling, intending to protect one of them, is an act that creates a high risk of harm to the victim. The decision to shoot was probably not due caution for the situation.

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

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