



**California
First-Year
Law
Students'
Examination**

**Essay Questions
and
Selected Answers**

June 2012

ESSAY QUESTIONS AND SELECTED ANSWERS
JUNE 2012 FIRST-YEAR LAW STUDENTS' EXAMINATION

This publication contains the essay questions from the June 2012 California First-Year Law Students' Examination and two selected answers for each question.

The answers received good grades and were written by applicants who passed the examination. The answers were typed as submitted, except that minor corrections in spelling and punctuation were made for ease in reading. The answers are reproduced here with the consent of their authors.

Applicants were given four hours to answer four essay questions. Instructions for the essay examination appear on page 3.

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June 26, 2012



California First-Year Law Students' Examination

Answer all four (4) questions.

Time allotted: 4 hours

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines which are not pertinent to the solution of the problem.

You should answer the questions according to legal theories and principles of general application.

Question 1

Chip, Inc. (“Chip”) manufactures computers. It uses a certain part—Part X—that can be manufactured by several companies, including Company A and Company B. It currently needs 1,000 units of the part. Company A, which had previously supplied the part, informed Chip that it was unable to do so.

On July 1, Chip sent a letter to the other manufacturers, including Company B, stating:

We are sending this order to several manufacturers. We will buy from the first manufacturer to commit itself to provide 1,000 units of Part X at \$20 each by July 31 on the terms specified in this order, provided the commitment is made to us by July 8. We are aware that, because of the nature of the part, we cannot expect you to warrant it against manufacturing defects.

On July 3, Company A told Chip that it might be able to supply 1,000 units of Part X after all. Since Company A was Chip’s preferred manufacturer, Chip sent a letter on July 4 to the other manufacturers stating: “We may be in a position to obtain 1,000 units of Part X elsewhere. Please disregard the letter we sent on July 1.”

On July 7, Company B delivered a letter to Chip stating: “We accept your offer and will supply you with 1,000 units of Part X by July 31 on the terms specified herein. We warrant the part against manufacturing defects.”

1. Does Company B have a contract with Chip to supply 1,000 units of Part X? Discuss.
2. Assuming that Company B does have a contract with Chip to supply 1,000 units of Part X, does the contract contain a warranty against manufacturing defects? Discuss.

ANSWER A TO QUESTION 1

As set forth below, (1) Company B has a contract with Chip to supply 1,000 units of Part X because Chip's revocation was ineffective. (2) The contract between Company B and Chip contains a warranty against manufacturing defects.

Applicable Law

Contracts involving the sale of goods are governed by the UCC. Goods are moveable tangible objects.

Here, the item involved in the contractual scenario is a part for a computer. This is moveable and tangible because it is being shipped and is being placed into the computer that Chip produces. If it could not be shipped or placed into the computer, it would not be moveable or tangible.

As such, these transactions involve a good, and are therefore governed UCC principles. Special rules apply to transaction between merchants. Merchants are those who regularly deal with the good at issue, or hold themselves out to have special knowledge of the good at issue.

Here, Chip manufactures computers and uses the part X involved here. Company A and B manufacture the chip. Therefore, Chip and Companies A & B are merchants. As such, special merchant rules will apply to these contractual situations.

(1) COMPANY B v. CHIP

CONTRACT FORMATION

A contract requires offer, acceptance, consideration, and no valid defenses.

Offer

An offer requires (a) an outward manifestation of present contractual intent, (b) with definite and certain terms, (c) communicated to an identifiable offeree.

July 1

Here, re (a), Chip sent a letter to manufacturers including Company B stating that they will buy 1,000 units of Part X at \$20 each from the first manufacturer to commit themselves by July 8 to delivering the part by July 31. This letter is a communication that was sent out, so it is an outward manifestation. Further, Chip said that they "will" buy the parts from the first manufacturer to commit to the performing according to the terms. "Will" is not equivocal language, it shows that Chip is serious about entering a contract with the first to commit to the terms. Further, Chip's statement of the specific terms shows that it is giving the recipients the power to accept because they know what will be expected of them - this is not an invitation to negotiate, but an offer to contract. As such, this element is met.

Here, re (b), the UCC only requires that the offer contain the quantity term. Chip has stated that it wants a manufacturer to commit to delivering 1,000 units of Part X. Therefore, the quantity term is definitively identified, and this is sufficient under the UCC.

As such, this element is met.

Here, re (c), Chip sent this letter to other manufacturers including Company B. Both Company A and Company B responded to the offer, so they received the offers, hence it was communicated to them. As such, the offer was communicated to identifiable offeree, including Company A and Company B.

As such, this element is met.

Therefore, elements (a), (b), and (c) are met. As such, Chip has made a valid offer to the manufacturers, including Company B.

Firm Offer

At common law, offers are not allowed to be held open as irrevocable unless they are supported by consideration. Under the UCC however, a firm offer will hold the offer open without consideration if there is (a) a writing between merchants (b) promising to hold the offer open for a period no longer than 3 month, (c) signed by the offering merchant.

Here, re (a), the July 1 letter was in writing and went from Chip to manufacturers of Part X. Therefore, this was a writing between merchants.

As such, this element is met.

Here, re (b), Chip promised to contract with the first company to commit to providing the part by July 8. Absent another company accepting Chip's offer, the offer will be help open by its terms until July 8, which is within 3 months of the offer being made.

As such, this element is met.

Here, re (c), the facts do not specifically state that the offer was signed. However, it is likely that the letter was on Chip's company letterhead, which would suffice for a signed writing.

As such, this element is met.

Therefore, elements (a) (b) and (c) are met, Chip has created a valid firm offer that is irrevocable and held open to accept until July 8.

Acceptance

Acceptance requires (a) an offeree with power of acceptance (b) give unequivocal assent to the terms of the offer, and (c) communicated to the offeror.

July 3

Here, re (a), Company A received the offer-letter from Chip and was responding to it. This shows that Company A knew of the offer, and was given the power to accept by Chip.

As such, this element is met.

Here, re (b), Company A said that it "might" be able to provide the parts to Chip. This is an illusory promise at best. Company A has not committed itself to providing the parts to Chip, as Chip requested in the offer. This defeats the essential term of Chip wanting the manufacturer to commit to providing the parts, not a "maybe" provide the parts. Chip needs certainty that its requirement will be met. Therefore, Company A has not assent to the terms of the offer.

As such, this element is not.

Here, re (c), Company A told Chip that is might be able to provide the parts. Chip later sent a letter to all other manufacturers in response to this, so we know that Chip heard this communication, and Chip was the offeror.

As such, this element is met.

Therefore, elements (a) and (c) are met, but (b) is not. As such, Company A did not validly accept Chip's offer.

Here, timely acceptance requires that the offeree accept the offer before it lapses - by July 8th - or before Chip indirectly revokes by contracting with another party, because the offer said Chip would contract only with the first company. Here, Company would have been timely because they accepted prior to July 8, and Chip had not contracted with another company. However, as discussed above, Company A did not validly accept Chip's offer.

As such, Chip's offer is still held open to be accepted before July 8.

July 4

Revocation

An offeror can revoke their offer by directly stating that they are terminating the power of acceptance, or indirectly by contracting with another party.

Here, Chip attempted to state that their offer was invalid now and no one had the power to accept it by telling the manufacturers to disregard their offer-letter. However, because this is a firm offer, it is held open without consideration and irrevocable for the stated, here, until July 8.

Further, Company did not validly accept Chip's offer, therefore Chip has not indirectly revoked by contracting with another party.

As such, Chip's offer remains open until July 8 or until Chip valid contracts with a Company.

July 7

Acceptance

Acceptance requires (a) an offeree with power of acceptance (b) give unequivocal assent to the terms of the offer, and (c) communicated to the offeror.

Here, re (a), Company B received Chip's offer-letter and is responding to it. This shows that Company B is an offeree with the power of acceptance, as intended by Chip.

As such, this element is met.

Here, re (b), Company B stated that they accept Chip's offer and will supply Chip with the 1,000 units of Part X by July 31 on the terms specified herein. This recital shows that Company B intend to accept Chip's offer and is serious about as they repeated and assented to every material term that Chip requested be assented to. Therefore, Company B has unequivocally assented to the terms of Chip's offer.

As such, this element is met.

Here, re (c), Company B delivered their letter of acceptance to Chip. Chip was the offeror. Therefore, Company B has communicated this acceptance to Chip.

As such, this element is met.

Therefore, elements (a) (b) and (c) are met. As such, Company B as validly accepted Chip's offer.

Timely acceptance requires that the offeree accept the offer before it lapses - July 8, or before the offeror indirectly revokes by contracting with another party first.

Here, Company B delivered its acceptance before July 8, and Chip had not validly contracted with another party.

As such, Company B has timely accepted Chip's offer.

Consideration

Consideration requires a bargained-for exchange of legal detriment. Legal detriment is doing or promising something that you don't have legal obligation to do, or not doing or promising to not do something that you have a legal right to do.

Here, Chip promises to buy the parts from the first-committing company, and Company B agreed to supply the parts to Chip. These promises were sought in exchange for each other. Chip does not have to buy the parts, and Company B does not have to supply the parts. They have promised to give their respective legal detriment in exchange of each other.

As such, there is valid consideration.

DEFENSES

Statute of Frauds

Contracts for the sale of goods \$500 or more are required to be in writing to be enforceable.

Here, the contract price is \$20,000 - this is above \$500, and therefore required to be in writing.

Here, even though there is not actual contract in writing, the statute of frauds may be satisfied by a sufficient memo. A sufficient memo requires the party to be charged to sign a writing that contains the essential terms.

Here, the party to be charged, Chip, has signed a writing (its offer-letter on letterhead) that has all the essential terms.

This will satisfy the statute of frauds, and not prevent the enforcement of the contract. As such, there is a valid, enforceable contract between Company and Chip.

(2) DOES CONTRACT CONTAIN WARRANTY

Additional Terms in Acceptance between Merchants

Under the UCC, when an acceptance is between merchants, and the acceptance contains additional terms, the additional terms become part of the contract unless the offeror objects, they materially alter the contract, or the accepted is conditioned on the offeror's acceptance of the additional terms.

Here, Company B and Chip are merchants. Company B's additional term of warranty against product defects will not be objected to by Chip because it benefits them; the term does not materially alter the contract because they are accepted the material terms of quantity, price, delivery time, etc; and the term is not conditioned on Chip accepted the term as Company said they accept the terms put forth by Chip, and made this additional term a collateral promise.

As such, the contract contains a warranty against manufacturing defects.

As set forth above, (1) Company B has a contract with Chip to supply 1,000 units of Part X because Chip's revocation was ineffective. (2) The contract between Company B and Chip contains a warranty against manufacturing defects.

ANSWER B TO QUESTION 1

1. Company B (B) v. Chip, Inc. (C)

Applicable Law

A contract for the sale of goods is governed by the Uniform Commercial Code (UCC). Goods are any tangible chattel identifiable at the time of formation.

The present agreement involves the sale of a computer part, Part X. A computer part is a tangible chattel identifiable at the formation stage of the possible agreement between C and B.

Therefore, the UCC is the applicable law to this case.

Formation

In order for an enforceable contract to exist between B and C, B must establish that there was an offer that the offer was accepted, and that adequate consideration existed between the parties in the agreement.

Offer

An offer is the outward manifestation of present contractual intent that is definite and certain in terms, communicated to the offeree.

The communication from C to B on July 1st identified that price (\$20 per unit), subject matter (Part X), parties (C and B), and time of performance (July 31st). Also, under the UCC an offer must contain the quantity. C's letter to B stated that 1,000 units of Part X were being requested. Therefore, the communication from C to B was definite and certain in terms.

C will contend that this July 1st letter was merely a proclamation of a willingness to negotiate as evidenced by the fact that C sent this letter to several manufacturers. However, C's language of "we will buy from the first manufacturer to commit itself" shows its intent to be bound by the terms contained in the communication. This language at its core states first come first served, which is an offer to contract and not merely a willingness to negotiate.

Furthermore, the letter was communicated to the offeree, B as C sent the letter by mail and B received the letter. This is shown by the fact that B responded to the letter. Therefore, C's communication to B on July 1st is an offer to contract creating the power to accept in B.

Revocation

C's letter to B, sent on July 4th, states that C wishes B to "disregard the letter we sent on July 1st." This language evidences an intent to revoke the offer previously sent to B. The question would therefore be whether C had the power to revoke the offer.

The general rule is that the offeror is the master of the offer and may revoke at any time. However, if C is declared a merchant in the computer field, then C's offer of July 1st may be a firm offer, in which case C would not have the power to revoke the offer and it would remain open for B to accept until July 8th.

A merchant is one with peculiar knowledge in the relevant field who often deals with the subject matter involved. The facts state that C manufactures computers and is attempting to acquire 1,000 parts for its computers. A manufacturer of computers deals in the business of computer parts on a regular basis. Moreover, the fact that C is attempting to acquire such a large number of parts suggests that C manufactures many computers and is not simply a small business just getting started. Therefore, C is deemed to be a merchant.

As a merchant, C's offer of July 1st will be held to be a firm offer if it is signed by C. The facts do not state that the letter was signed, however, as B was aware of who sent the letter, as evidenced by its ability to respond to the correct address, C would have had to presumably identify itself in some form in the July 1st letter. If this was done with a stamp and typed letter head or any other identifying element, then the letter would be signed.

Thus, because C is considered a merchant in the computer field and because it can be reasonably inferred that the offer of July 1st was signed by C, C's offer is a firm offer and is irrevocable until the time stated of July 8th.

Therefore, C's attempted revocation of July 4th is to no avail and B still has the power to accept C's offer.

Acceptance

Acceptance is the unequivocal assent to the terms of an offer.

Under the UCC, any definite expression of acceptance is acceptance even if the communication contains different or additional terms than the offer.

On July 7th, B sent a letter to C that stated that B accepts C's offer and will comply with the terms contained within that offer. This is a definite expression of B's acceptance of C's terms.

C may contend that because B sent the acceptance letter on July 7th and the offer expired on July 8th, C will not receive the letter until after the offer expires and the acceptance will be defective.

However, the mailbox rule states that acceptance is effective upon dispatch if communicated in a commercially reasonable method.

The facts indicate that B accepted C's offer in the form of a letter sent in the mail. Due to the fact that C's offer was also sent in the mail, this means is commercially reasonable because it is the same means as the offer.

Moreover, C's attempted revocation of July 4th, while ineffective, would not have been received by B before the acceptance was on July 7th because July 4th is a national holiday. Revocation is effective upon receipt. Therefore, even if C was not a merchant or the offer was not signed, C's revocation of the offer would still be defective under the mailbox rule.

Therefore, B adequately accepted C's offer.

Consideration

Consideration is that which is bargained for in exchange for legal detriment.

The bargain between C and B would be \$20,000 in exchange for 1,000 units of Part X. The legal detriment to B is the promise to deliver 1,000 units of Part X and the legal detriment to C is the promise to pay \$20,000.

Therefore, the agreement between B and C contains adequate consideration.

Because this agreement contains adequate consideration, there is an enforceable contract between B and C

Defenses

Statute of Frauds

Contracts for the sale of goods for \$500 or more are required to be in writing.

The facts state that the contract between B and C is for 1,000 units for \$20 each.

Therefore, this contract is for \$20,000 and has to be in writing.

Sufficient Memorandum

Sufficient memorandum between C and B identifying the parties, quantity, subject matter, and intent to bargain would satisfy the statute of frauds.

The necessary terms as well as intent to bargain are found in C's offer to B of July 1st (discussed supra in Offer) and B's acceptance of July 7th.

Therefore, this contract is not deemed void based on the statute of frauds.

2. Terms of the Contract

Different Terms

According to section 2-207 of the UCC, discussed supra, acceptance of an offer may contain different terms of the offer and still create a contract.

C's offer stated that there would be no warranty for manufacturing defects and B's acceptance stated that it would warrant Part X against manufacturing defects.

This warranty is a different term.

There is a split of jurisdictions as to how to determine whose terms govern the contract. A majority of jurisdictions state that the different terms are knocked out and replaced by a gap filler. Therefore, the warranty term would be replaced with the gap filling provision stating that there will be a warranty against defects for a reasonable time.

A minority of jurisdictions state that different terms should be treated as additional terms. Therefore, because C and B are both merchants, the question would be whether the warranty term materially alters the contract. A reasonable merchant in B and C's shoes would probably state that a warranty against defects in 1,000 units of a computer part is a material alteration. Therefore, C must object to the term within a reasonable time or the warranty will become part of the contract.

Question 2

Van is short and small. One day, as he was walking down a street near his office, he was suddenly grabbed by Abe and Bob, who were each much taller and larger than he, and was dragged into an alley. Abe and Bob beat Van severely with brass knuckles and took several items from him, including a ring. Charles had been standing nearby watching the attack. After the attack, Abe and Bob gave Charles the ring they had taken from Van.

Van was traumatized by the attack, and decided to carry a knife for protection.

Not long after the attack, Van was walking down the street near his office when he saw Abe walking toward him. He suddenly felt fear and rage. He quickly pulled out his knife and held it behind his back. Not noticing Van, Abe put his hands into his pocket. Van believed Abe was reaching for his brass knuckles. Van immediately stabbed Abe, killing him instantly. In fact, Abe had been reaching for a bus pass, not brass knuckles.

1. With what crimes, if any, can Bob reasonably be charged and what defenses, if any, can he reasonably raise? Discuss.
2. With what crimes, if any, can Charles reasonably be charged and what defenses, if any, can he reasonably raise? Discuss.
3. With what crimes, if any, can Van reasonably be charged and what defenses, if any, can he reasonably raise? Discuss.

ANSWER A TO QUESTION 2

1. STATE v. BOB CONSPIRACY

Conspiracy is an agreement between two or more people to commit a crime and with the specific intent for that crime to occur. Most jurisdictions require an overt act in furtherance of that crime. Modernly, unilateral agreements are allowed. Most jurisdictions also presume agreement from actions implying an agreement.

Here, Bob suddenly GRABBED Van with Abe. They both beat Van, robbed (infra) him and left him. The State will argue most criminals will not ask for a signed contract before agreeing to do criminal activities. The State will state contend the "concerted" effort in unity and synchronicity illustrated an implied agreement between Bob and Abe to batter and rob him. Their intents were clear from the fact they actually followed-up with their implied agreement by not only an overt act in furtherance, but by actually completing the crimes of battery and robbery (infra).

Abe is not in question here, but should the state choose, he would also be liable for conspiracy under the modern rules in some jurisdictions.

Bob will contend he never agreed with Abe to do anything illegal and it was just a sudden reaction.

Bob may be charged with conspiracy to commit robbery and battery, but whether the State will succeed will be up to the courts.

BATTERY #1

Battery is the unlawful application of force to the person of another.

Here, Bob and Abe applied an unlawful force when they GRABBED him suddenly.

Generally, grabbing another would cause a substantial force to hold someone so as to

prevent an escape. The facts do not indicate a consent by Van nor a legal privilege by either Bob or Abe when they grabbed Van.

Thus, Bob will be charged with Battery of Bob when he grabbed him.

ASSAULT #1

Assault is the attempted battery (Supra) or the causing of reasonable apprehension of an immediate harmful touching.

When Bob grabbed Van suddenly, there may not have been time for Van to feel any apprehension or notice a threat. However, once the battery occurred, Van could have been reasonably apprehensive as to what was going to happen next, because grabbing usually implies a hold without releasing. One would be very apprehensive when two much larger people grab one suddenly and without provocation.

Here, Bob will be charged with assault of Bob.

BATTERY #2--SUPRA

Here, Bob and Abe DRAGGED (use of more force) Van into an alley by grabbing him (forceful touching) and moving him. The facts do not state Van consented to this either and Bob did not have any legal authority for his actions.

Thus, Bob will be charged with the battery of dragging Van into the alley.

AGGRAVATED BATTERY #3--SUPRA, BUT WITH USE OF WEAPONS

Here, Bob and Abe applied unlawful force upon Van by SEVERELY beating him with BRASS KNUCKLES, a weapon used to severely injure the body. Once again, Bob had not legal justifications for his actions of applying harmful force upon Van.

Bob may be charged with aggravated battery as well.

FALSE IMPRISONMENT

False imprisonment is the unlawful confinement of another within fixed boundaries for any period of time.

Here, Bob and Abe intended to confine Van by GRABBING him so as to prevent physical escape and then dragging him into an alley. Alleys make escape more difficult, because they have at least two walls and sometimes a dead-end. This would substantially decrease chance of escape. State will also argue Bob had no reason other than robbery and battery to hold Van against his will for the period of time necessary to complete the robbery and battery.

Bob does not seem to have any defense.

Bob will be charged with the crime of false imprisonment.

KIDNAPPING

Common Law Kidnapping--under common and old law, kidnapping was taking one out of their country or state without authorization and against their will. Common law rules of kidnapping will not apply here.

Modernly, kidnapping is false imprisonment (SUPRA) plus asportation. Kidnapping is more serious than false imprisonment because asportation (movement) can dramatically increase risk of harm to the victim.

Here, Bob forcefully grabbed and moved (asportation) Van into the alley where a more serious harm did occur when Van was severely beaten with brass knuckles. Van being smaller in stature and confined to an ally with two bigger guys severely beating on him prevented any reasonable escape.

Bob will attempt to say kidnapping is like false imprisonment and Van was only dragged a few steps rather than state lines. He will argue there was no substantial asportation.

The State will successfully counter by saying the asportation element is for prevention of risk to victim. Here, the movement into the alley allowed more time and cover from detection when Bob unleashed his furry on Bob.

Thus, Bob will be charged with kidnapping as well.

LARCENY

Larceny is the unlawful taking and caring away personal property of another with the specific intent to permanently deprive.

Here, Bob took SEVERAL ITEMS INCLUDING A RING from Van. These items seem to have been personal property of Van, another. Bob intended to apparently deprive Van of his property, because the violent nature of the taking did not leave room for the likelihood of a civil return of his chattel.

Bob will be charged with larceny of Van's property and ring.

ROBBERY

Robbery is defined as larceny (supra) with use of force, fear or intimidation.

The facts did not state Van consented to the taking of his personal property by Bob. Further, Bob had to have used sufficient force to enter Van's pocket and extract the items and the ring. Further, Bob used brass knuckles to beat and incapacitate Van to the point where he would be able to easily extract Van's personal property from Van's pocket without any resistance.

Bob may be charged with robbery of Bob as well.

DEFENSES

Bob does not seem to have any reasonable defenses based on this fact pattern.

2. STATE v. CHARLES

Conspiracy--Supra

Charles will argue he never had an agreement with Bob when Bob decided to batter and rob Van. He will further successfully say he did not have any specific intent for any of those crimes to be committed.

The State will have a daunting task at trying to prove specific intent.

Charles will probably not be charged with Conspiracy.

RECEIVING STOLEN PROPERTY

Receiving stolen property is obtaining property stolen from another with the knowledge it was stolen and the intent to permanently deprive the rightful owner.

Here, Charles took the ring which he saw being robbed from Van, another. Charles had scienter of the nature of its acquisition and took it anyway.

Charles will contend he could not say no to two big guys who just beat Van and then gave him the ring, probably as "hush money." Charles will contend he didn't specifically intend to deprive Van because he would give it back. The facts don't state such a case but the facts also abruptly stops with this information.

Charles may be charged with receiving stolen property, but the State will have a huge task in proving intent to deprive element of the crime.

ACCOMPLICE LIABILITY

Parties to a crime may be charged for accomplice liability if they intended for that crime to occur, had knowledge of its occurrence and actively assisted.

COMMON LAW

Under common law, accomplices were separated into Principals in the 1st and second degree. Principals in the 2nd degree were the ones at the scene of the crime but not committing the actual crime.

PRINCIPAL IN THE 2ND DEGREE

Here, Charles will argue he was not only not committing any of the crimes but he had no knowledge ahead of time, nor did he actively assist.

He will also argue the gratuitous gift was not on a condition that he would thwart the authorities or not report the crime.

He will not be charged with being principal in the second degree.

ACCESSORY AFTER THE FACT

He will also argue the gratuitous gift was not on a condition that he would thwart the authorities or not report the crime.

He will not be charged with being accessory after the fact.

MODERN ACCOMPLICE LIABILITY LAW

Modernly, all are accessories. Accessories are liable for all foreseeable natural and probable consequence resulting from their accomplices crimes. However, if the accomplice has rendered assistance after the crime has been completed, he would not be liable for acts prior.

There would only be the crime of accessory after the fact.

Charles may be charged with accessory after-the-fact.

MISPRISON

3. STATE v. VAN

HOMICIDE

Homicide is the killing of a human being by another. A human being is one who is born and not dead yet. In California, a viable fetus is also considered a human being.

Here, Abe, was an alive human being who was killed in an accident.

There was a homicide.

CAUSATION

In order for murder to be proven, there must be both actual and proximate cause.

ACTUAL CAUSE: But for Van stabbing Abe, Abe would not have died instantly.

PROXIMATE CAUSE: It is foreseeable that being stabbed by a deadly weapon such as a knife, one would sustain life-threatening wounds. Charles was killed instantly from such a wound and thus there is proximate causation as well.

MURDER

Murder is the unlawful killing of another with malice aforethought. Malice can be established by one of the following 4 ways:

MALICE

1. Felony Murder Rule (FMR)--FMR is the a killing which occurs during the commission of one or more of the inherently dangerous felonies. These felonies are rape, robbery, burglary, arson, mayhem and the like.

Here, Van was not in the commission of one of the above-motined felonies and thus malice may not be established for FMR.

2. Specific Intent--Malice can be achieved if the defendant actually and specifically wanted to kill.

Here, the State will argue Van carried a knife, a deadly object used for killing, and took it out to use it against Abe. The state will also say Van was RAGING and most likely to get revenge for Abe beating him earlier.

Van will argue he never intended to kill for no reason. Van will attempt to say he was merely protecting himself.

If the State charges Van with Murder, we would have to go to the degrees.

3. Intent to commit great bodily harm/injury--one needs to only intend to create great bodily injury to created the intent needed to establish malice.

Here, the State will also argue that carrying a knife and approaching Abe to stab his was a reckless act creating great bodily harm. State will say Van could have stepped away and retreated because they were not indoors or a place where escape was not possible.

4. Wanton and reckless act showing careless disregard for human life--Malice may be established if a defendant realized the risks involved, but acted or omitted to act, and that act/omission caused substantial harm. Does not apply here.

First Degree Murder

First degree murder is killing with premeditation and deliberation and those killing enumerated by legislation such as: lying and wait, use of explosives, use of armor-piercing bullets, and the like.

The State will argue Van carried a knife in anticipation of meeting with Bob and Abe one day. When Van saw his chance at Abe, he hid his knife behind his back. The State will argue this was a deliberate plan and premeditation to kill Abe.

Van will argue he was just holding his knife ready to defend himself if the situation arose. He will insist his previous beating led him to believe, even if mistakenly, he needed to protect himself from similar harm as before.

If the State does not charge for first degree murder, we move down to second degree murder.

Second Degree Murder

Second degree murder is all murder which is not first degree murder, but there is malice.

Here, the State will argue even if first degree doesn't apply, there was malice because of the inherently dangerous act of stabbing someone with a knife. Van will argue there was no malice, only self defense. He will argue he couldn't take any chances because he was GRABBED SUDDENLY the last time and was afraid he would have not time to react.

Thus, he was merely preparing for self defense.

If Van is not charged with first degree, he may be charged with second degree murder.

MITIGATION

VOLUNTARY MANSLAUGHTER

Voluntary manslaughter is the intentional killing of a human being with the specific intent to kill but with malice being mitigated due to some provocation, or other mitigating circumstance.

Van will argue his killing of Abe resulted with sudden provocation brought about by the RAGE he felt from his last beating delivered by Abe. He will argue he did not have sufficient time to COOL DOWN. He will also argue he was acting in self defense because Abe was REACHING for potentially BRASS NUCKLES, AGAIN.

Abe will most likely be charged with voluntary manslaughter.

INVOLUNTARY MANSLAUGHTER

Involuntary manslaughter is an unlawful killing of another without the specific intent, but with negligence. Negligence has to be established by the standard of reasonableness. The defendant who had a duty of care, breached that duty and that breach caused harm, will be criminally liable.

If all else fails for the State because of property defense by Van, State may try to offer a plea deal for involuntary manslaughter so as to get a conviction and reduce court expenses.

DEFENSES

SELF DEFENSE

Van will argue he was reasonably and truly afraid for his life when he stabbed Abe as Abe was reaching down in his pocket. He will argue the last time Abe saw him, he grabbed brass knuckles from his pocket and severely beat him.

The State will argue Van could have left the area and called the police rather than stick his ground and fight.

If Van is not successful in his theory of self defense, he will argue for the defense infra.

IMPERFECT SELF DEFENSE

Van will say while his tactics were not reasonable, one could foresee the TRAUMA he was suffering from when he irrationally attempted to defend himself by stabbing Abe before seeing if there was a weapon.

CRIME PREVENTION

Van will argue he was also attempting to prevent yet another battery upon himself and potentially another robber. This will not be successful as preemptively deadly attacks are not justifiable for situations not showing a threat to his life. Van will argue based on history, his life was in danger and a crime was going to occur.

This will also fail as a defense.

DOMESTIC AUTHORITY

The facts do not say Van was attempting to make an arrest. Even if he was, as a private citizen, he would have had to make the arrest at time of the criminal acts.

ANSWER B TO QUESTION 2

1. STATE V. BOB

ASSAULT/AGGRAVATED ASSAULT

Assault is the criminal intent to cause an offensive or harmful touching or battery. Aggravated assault is when a weapon is used increase the imminent threat of harm such as brass knuckles.

Here, the facts state that Van was a much smaller man than Bob and that Bob approached Van and suddenly grabbed him. The facts are not clear whether Van saw Bob and Abe approaching or not but if he did see them approaching then Bob will be liable for an aggravated assault.

BATTERY/AGGRAVATED BATTERY

A battery is a general intent crime which is the criminal intent to cause an offensive or harmful touching of another that does actually cause such an offensive contact.

Here, Bob grabbed Van and dragged him and then beat him with brass knuckles. This is an aggravated battery because Bob and Abe used brass knuckles to beat Van. Brass knuckles are considered a weapon and weapons used in the battery escalate the battery to an aggravated battery. Bob will be liable for aggravated Battery.

FALSE IMPRISONMENT

False Imprisonment is a general intent crime which is usually seen as a misdemeanor in many jurisdictions but it is the confining of another person to a bounded area defined by the actor with no reasonable means of escape.

Here because Van was grabbed and dragged to an area he was then confined to that area while he was beaten and robbed. Bob may argue that Van had a reasonable

means to escape if he had been able to get up and run away but the fact that Van was grabbed and dragged shows that he was not able to get up and run away and escape and then beaten severely thus creating an inability to run away or escape. A reasonable person would have gotten away from such a beating if they had been able but two men much larger beating on another man would definitely create an inability to escape for that time period. Bob will be held liable for the crime of False Imprisonment.

KIDNAPPING

Kidnapping is a general intent crime which is the confining of another person with no reasonable means of escape and then moving them to another location, also known as asportation. Although most jurisdictions require the movement from one location to another to be substantial, the state may argue that grabbing Van and dragging him to another relocation less out of view was a form of kidnapping. Van was confined to that area and unable to escape on his own and therefore it is possible that Bob will be found liable for kidnapping.

ROBBERY

Robbery is a specific intent crime which is the taking of another's personal property with force or threat of force with the intent to permanently deprive.

Here, Bob grabbed a man and dragged him with force to a location where he beat the man and took several items including a ring. This is clearly force and a threat of force that created a robbery from Van. Taking of his personal items off of his person is the trespassory taking required. The facts do not state that either Bob or Abe had any intent to return the personal items that they took from Bob and it is implied that they had the intent to permanently deprive, especially since they gave one item away to someone standing nearby. Bob will be held liable for Robbery of Van.

LARCENY

Larceny is a specific intent crime which is the trespassory taking and carrying away of another's personal property with the intent to permanently deprive the owner of their property. Usually one can only be found liable for either robbery or larceny because they are merely one version of the other. If for any reason Bob was not found to have created enough force against Van to be defined as robbery then the trespassory taking of Van's personal items, meaning without his consent, and taking them away with the intent to permanently deprive will hold Bob liable for Larceny of Van's belongings.

SOLICITATION

Solicitation is the asking of another to commit a crime. The asking may be implied through words or conduct and does not necessarily need to be in expressed words.

Here, Bob and Abe gave Charles a piece of stolen property thus implying a request that he receive the stolen property. It may have been implied in order to buy Charles silence and create him as part of the criminal conduct so that he would not expose them or call the police on them but that is not clear on the facts. What is clear is that giving Charles a ring was asking him to commit a crime through implication and conduct. Bob can be found liable for solicitation.

Merger Rule

Solicitation merges with the target crime or with conspiracy. If Charles is found to be a co-conspirator then the solicitation of Charles to commit a crime will merge with conspiracy.

CONSPIRACY

Conspiracy is a specific intent crime which is an agreement between two or more people to commit a crime. In the minority view it was required merely to have an agreement but the modern view requires an overt act in furtherance of the crime.

Here, the facts do not state that there was an agreement expressed between Abe and Bob but it is implied based on their actions that they agreed to commit the crime of robbery of Van as they worked in cohorts together to grab Van and drag him aside and then beat him and take his belongings.

Overt Act in Furtherance:

There is clearly an overt act in furtherance of the crime based on the fact that they did actually carry brass knuckles on their person in order to accomplish this criminal conduct. Bob also did grab Van and drag him and beat him and rob him thus an overt act element has been fulfilled.

Bob is liable for Conspiracy with Abe.

Co-conspiracy Liability/Pinkerton Rule

According to the Pinkerton Rule of co-conspiracy liability, any fellow conspirators can be held liable for the other conspirator's acts and crimes that were completed in furtherance of the target crime conspired to. Because Bob and Abe were co-conspirators then they will be held liable for any crimes that were completed in furtherance of the target crime of attacking, assaulting, battering and robbing Van.

ACCOMPLICE LIABILITY

Accomplice Liability is the act of encouraging or counseling another to commit a crime, mere presence is not enough, aiding must be active. Here, it can be argued that Bob was an accomplice to Charles in aiding his crime of receipt of stolen property discussed infra. Bob not only aided but he gave the ring to Charles after Charles watched the whole crime happen.

The facts are not clear as to any counseling of Abe but he definitely worked in cohorts with Abe to grab Van and attack him and create the robbery therefore Bob is held liable for accomplice liability for Abe and possibly with Charles.

Accessory/Principal

An accessory to a crime is one who aids before or during the crime another who is in the commission of a crime. A principal is the one who actually commits the crime and is present at the crime. Bob is the principal of the crimes of assault, battery and robbery of Van. Bob may be an accessory before the fact for Charles.

DEFENSES

Withdrawal

Any defense of withdrawal would need to show the defendant withdrawing or trying to stop the criminal behavior prior to the crime. Bob showed no attempt to withdraw on these facts.

There are no valid defenses for Bob.

CONCLUSION

Bob will be found liable for conspiracy, Assault, Battery, Robbery or Larceny, False Imprisonment with no appropriate defenses.

2. STATE V. CHARLES

SOLICITATION

Solicitation is the asking of another to commit a crime.

Here, Charles did not ask anyone to commit a crime but it can be argued by the state that his watching of Abe and Bob while they beat another person and stole from him was an implied invitation to be part of the criminal behavior. The asking may be implied by actions or conduct and does not need to be expressed through words. Charles made no movement or conduct or actions that obviously asked to participate in a crime with Bob and Abe. Charles will probably not be found liable for solicitation.

Merger-defines supra

Charles probably will not be found liable for solicitation so there is no merging of solicitation to a higher crime.

CONSPIRACY-defined supra

Charles may have been found to impliedly conspire with Abe and Bob as he watched them committing the criminal conduct to Van. The facts do not state any conduct or behavior that would indicate an agreement with Abe or Bob except merely watching them attack him and steal from him. Charles probably will not be held liable for conspiracy on the attack of Van but his taking of the stolen ring may be found to be an agreement with Abe and Bob thus creating a conspiracy regarding the robbery of the ring.

Co-Conspirator Liability/Pinkerton Rule-defined supra

If Charles is found to have impliedly agreed to conspire in the taking of the ring from Van then he will be held liable for all of Bob and Abe's crimes that were involved in the furtherance of the taking of the ring.

RECEIPT OF STOLEN PROPERTY

Receipt of Stolen Property is the receiving of stolen goods by the defendant who knows that they are stolen and the defendant has the intent to permanently deprive the owner of the property of the goods.

Here, Charles watched Abe and Bob take the items including the ring from Van and when Abe and Bob gave Charles the stolen ring it was clear that he knew it was stolen from Van. Charles did not give the ring back to Van nor do the facts indicate that he meant to return the item to Van therefore it is implied on these facts that Charles had an intention of keeping the ring and permanently depriving Van of his property. Charles can be found liable for the receipt of stolen property.

ACCOMPLICE LIABILITY-defined supra

Charles stood by and watched Abe and Bob attack and steal from Van. While this may be morally reprehensible it is not illegal and does not indicate accomplice liability. Mere silence and presence is not enough. Aiding must be active. If Charles had said encouraging words or even nodded his head then this would have been seen as accomplice liability but his watching quietly with no behavior indicating encouragement does not hold him liable for accomplice liability.

Accessory After the Fact

Someone who assists a criminal after the crime in either hiding or aiding and abetting them is considered an accessory after the fact. The state may argue that Charles receipt of the stolen property was a way for Bob and Abe to get rid of the hot goods and therefore aided Bob and Abe in their robbery and attack on Van. An accessory must have the intent of helping the criminal and the target crime and the facts do not state any evidence of Charles having an intent to help Abe and Bob. Charles probably cannot be found liable for an accessory after the fact.

DEFENSES

Mistake

Mistake is a defense when it negates the criminal intent for a specific intent crime even if the mistake is unreasonable. Charles may argue that the receipt of stolen property was a mistake but the facts do not indicate that he made any effort to correct his mistake or that he felt a mistake occurred when he took the ring from Bob and Abe.

Duress

Duress is a defense used when the defendant felt fear of imminent threat of harm to himself or someone else in close relationship to him and that the threat was reasonable. Charles may argue that he took the ring from Bob and Abe in fear of what they might do to him if he did not take the ring. Bob and Abe clearly were larger men that just beat another man severely in front of Charles. It might be reasonable to assume that Charles would be afraid that Abe and Bob were threatening to him and if he did not take the stolen property of the ring that he could fear of an imminent and immediate threat that Bob and Abe would begin immediately beating him and robbing from him. If Charles felt any immediate threat from Bob and Abe, this would be a valid defense for him.

CONCLUSION

Charles will be found liable for receipt of stolen property but will probably have a valid defense of duress.

3. STATE V. VAN

MURDER

Murder is the intentional and unlawful killing of another human being with malice aforethought.

Here, Van killed Abe but whether or not it will be murder will depend on whether his acts were legally justified.

HOMICIDE

Homicide is the killing of another human being. A human being is considered dead when their internal organs such as their heart stop functioning or when their brain activity ceases. Here, the facts state that Abe died thus we have a homicide by Van.

CAUSATION

Actual Cause

The actual cause is found by using the "but for" test asking but for the defendant's actions, the victim would not be dead.

Here, but for Van's actions Abe would not be dead. But for Van stabbing Abe with a knife, Abe would not be dead. Van is the actual cause of Abe's death.

Proximate Cause

A defendant is only liable for consequences that are reasonably foreseeable at the time of the injury and are not too remote or improbable.

Here, it is reasonably foreseeable that when you take out a knife and stab someone with it that they will be injured and possibly die from that action. This is not too remote or improbable and is a foreseeable consequence of that action. Van will be found to be the proximate cause of Abe's death.

MALICE

Malice aforethought is defined through four factors, intent to kill, intent to cause serious bodily harm, a depraved heart and/or felony murder. If Van was found to have malice aforethought then he will be found guilty of murder.

Intent to Kill

When defendant's actions are substantially certain to cause death to the victim.

Here, it is not clear on the facts if Van had an intent to kill but when one uses a knife it is seen as a deadly weapon then it is implied that there is an intent to kill and Van used a knife to stab Abe. It can be implied by the weapon used and the actions of Van that he intended to kill Abe.

Intent to Cause Serious Bodily Harm

When defendant acts with knowledge that his actions pose a significant threat of serious injury or death to the victim yet he continues with the actions.

Van stabbing a knife into Abe can be considered an act to at least intend to cause serious bodily harm. A knife is a weapon such that using it on another human being is more likely than not to cause serious bodily harm. It is not expressed in the facts but implied by Van's conduct that he knew that stabbing Abe with a knife would cause serious bodily harm if not death and yet he continued anyway. Van can be seen as having the intent to cause serious bodily harm.

Depraved Heart

Defendant acts with a conscious disregard of his actions posing extreme recklessness towards the injury or harm to another.

Here, Van took a knife and stabbed Abe with it which would at least be in reckless disregard for human life at the level of gross recklessness. This action pose a

substantial threat of harm or injury to Abe. Van would be seen as having a depraved heart at the very minimum of malice aforethought.

Felony Murder

A killing that occurs during the commission of a felonious independent crime that is inherently dangerous.

Here, Van was not in the commission of a felonious crime when he ran across Abe and stabbed him so the felony murder doctrine would not apply to these facts.

FIRST DEGREE MURDER

First Degree Murder is the intentional killing of another human being with malice aforethought and premeditation.

The state may argue that Van had premeditation as well as malice aforethought and that Van would be liable for first degree murder of Abe.

Premeditation

Premeditation is the deliberate and conscious planning ahead of time to commit the murder. There are two main views on premeditation.

The Carroll theory: The theory of premeditation set forth in the Carroll case stated that there was premeditation if there was deliberate and purposeful thought to the defendant's actions. The state may argue that Van carried a knife on him and when he saw Abe pulled the knife out and hid it behind his back and this constituted purposeful and deliberate thought enough to be considered premeditation. Van will argue that he was carrying the knife for his own protection only.

The Anderson Theory: The view of premeditation set forth by the Anderson Case stated that premeditation is found by a preconceived design and that no time is too short to formulate such a design. The state may argue that Van carrying his knife on his person and pulling it out and hiding it behind his back was the manifestation of a preconceived design that was formulated upon his seeing Abe. Again, Van may argue that his knife was only carried on his person for self protection.

Based on premeditation, Van could be found liable for First Degree Murder.

SECOND DEGREE MURDER

Murder in the second degree is defined as the intentional killing of another human being with malice aforethought, gross recklessness or a depraved heart.

As discussed supra Van can be found to have one of the four factors to define malice aforethought through either the intent to kill, the intent to cause serious bodily harm or a depraved heart. Van could be found liable for second degree murder.

DEFENSES

Self Defense

When the defendant acted with reasonable force without inciting the need on himself uses force reasonably necessary to protect himself.

Here, Van felt a need to protect himself which was brought on from his previous attack from Abe. The use of self defense in most jurisdictions must be such that the defendant did not provoke this need himself. Van did not provoke Abe to attack him on these facts. However, Abe will argue that as he was walking down the street he did not even notice Van and was merely putting his hands in his pocket. Van will argue that because of Abe's prior attack on Van that Van feared for his safety and that his use of self defense was not unreasonable. Van was not attacked to the point of fearing for his life from Abe or Bob prior to the incident where he pulled his knife and the State may argue

that Van's need to use deadly force was unreasonable. If Van's use of a deadly weapon to protect himself is seen as excessive then he can claim imperfect self defense.

Imperfect Self Defense

When force is required that may be unreasonable but honest belief that it is needed to protect himself or if the defendant brought the action on himself by instigating the situation or escalating a situation.

Here, Van may argue that his use of deadly force against Abe was reasonable to him on a subjective level based on the history of not only being attacked so violently but that actual recent attack having come from Abe directly. The state may argue as stated above that when Abe and Bob attacked Van prior to the knife incident it was not with deadly force and it was not life threatening so that it was unreasonable for Van to use deadly force to protect himself. Also based on the analysis of voluntary manslaughter infra Van may be justified in his attack and killing of Abe and Imperfect Self Defense would be a valid defense for Van.

Reasonable Person

The need for reasonable self defense is actually measured subjectively if a person with that reasonable experience and situation is found to be reasonable in his belief. Based on this level, Van will probably be seen as having a reasonable need for self defense against Abe.

Van will probably be found to have been reasonable in his belief that he needed to protect himself from Abe and either Self Defense will be a valid defense for him or at the very least imperfect self defense based on voluntary manslaughter will be a valid defense for him.

Mistake-defined supra

Mistake is only a defense if it can show that it negated the intent required for a specific intent crime so if Van is found to have intended to kill Abe then a defense of mistake can negate the intent to kill element of murder. Van may argue that it was a mistake to have stabbed Abe but the fact that he held the knife behind his back and then stabbed Abe is evidence against a mistake and leans more towards purposeful actions. Mistake will probably not be a valid defense for Van.

VOLUNTARY MANSLAUGHTER

When a defendant is provoked such that a reasonable person would be provoked into such a passionate act without adequate cooling time

Adequate Provocation:

When Van saw Abe walking towards him, the facts state that he suddenly felt fear and rage. The adequate provocation must be such that a reasonable person would be provoked to such a rage or heat of passion. The state may argue that it is not reasonable to have someone walking down the street putting their hands in their pockets to incite a person to such rage and fear however, because of Van's previous attack from Abe the court will probably find it reasonable that Van would think that Abe might be carrying his brass knuckles and might be planning another attack knowing now that Abe had the propensity to cause him such harm. The court will probably find that Van was reasonably and adequately provoked to rage.

No adequate Cooling Time:

Another element of Voluntary Manslaughter is that upon the adequate provocation, there is not enough time for the rage or provocation to cool down and for the defendant to have found a calmer state of mind. Here, Van was walking down the street and his rage and fear were provoked upon seeing Abe and then Abe continued to come closer and closer to him thus provoking a more intense feeling which would be the opposite of

adequate cooling time. It is reasonable that there was no adequate cooling time for Van after being provoked to such rage and fear upon the sight of Abe.

Van will probably be found to have committed Voluntary Manslaughter because of the provocation being reasonable upon seeing Abe and there being no adequate cooling time.

INVOLUNTARY MANSLAUGHTER

Involuntary Manslaughter is the unintentional killing of another human being with gross negligence.

Here, Van's stabbing of Abe was intentional and it created an instantaneous result of Abe's death. It would be hard for Van to argue that this was gross negligence. Van probably will not be found liable for Involuntary Manslaughter.

CONCLUSION

Van will be held liable for Murder of Abe but will have a valid defense of Self Defense and can at least mitigate the murder down to Voluntary Manslaughter.

Question 3

Superstore is a 24-hour grocery store. For safety reasons, Superstore has installed bright lights in its parking lot that turn on in response to loud noises. The lights turn on several times a week, especially during the night, and have caused neighboring homeowners to complain of loss of sleep and various adverse health consequences.

One night, Ned and Carl exited Superstore, each carrying a heavy bag. Ned is the publisher of a local newspaper and Carl is a business consultant. As they exited, they accidentally bumped into each other, each causing the other to drop his bag and spill its contents. A loud argument ensued. Ned took several steps toward Carl; Carl threw an orange at Ned and grazed his pant leg without injuring him; and Ned punched Carl in the stomach. The loudness of the argument caused the lights in the parking lot to turn on. Soon, a Superstore security guard arrived and restored order.

The next day, Ned published an account of the incident, calling Carl a “coward and a liar.” Carl experienced a substantial decrease in business consulting thereafter.

1. What tort claim or claims can Ned reasonably bring against Carl, and what defense or defenses can Carl reasonably raise? Discuss.
2. What tort claim or claims can Carl reasonably bring against Ned, and what defense or defenses can Ned reasonably raise? Discuss.
3. What tort claim or claims can the neighboring homeowners reasonably bring against Superstore? Discuss.

ANSWER A TO QUESTION 3

1.NED V. CARL

ASSAULT

Defined, supra. Here, Ned and Carl first "accidentally bump into each other." Since this was an accident, there was no intent, and therefore this did not constitute ASSAULT.

However, then "Carl threw an orange at Ned and grazed his pant leg." Throwing a physical object at another person reasonably causes apprehension of an immediate harmful or offensive contact. Since Ned subsequently punched Carl, he was clearly put in apprehension. CARL IS LIABLE FOR ASSAULT.

BATTERY

Defined, supra. Note: the contact does not need to be made by the defendant directly; it may be achieved by an instrumentality. Also, for the purposes of BATTERY, the physical contact may be to anything closely associated with a person, such as their clothes.

"Carl threw an orange at Ned and grazed his pant leg." Since Carl threw the orange "at Ned," Carl demonstrated intent to cause the orange to make physical contact with Ned. "But for" Carl's throwing the orange, Ned (via his pant leg) would not have suffered offensive physical contact; thus Carl caused the contact with Ned. Having a piece of fruit thrown at one would constitute offensive contact. Since Carl intentionally caused offensive physical contact with Ned, the person of another, CARL IS LIABLE FOR BATTERY.

DEFENSE TO ASSAULT AND BATTERY

SELF-DEFENSE

A person is entitled to protect him/herself with the degree of force necessary, if he reasonably believes another will imminently commit a violent act against him/her.

Carl will argue that when "Ned took several steps toward Carl," Ned was put in reasonable apprehension of imminent violence. Carl's response of throwing an orange was not deadly force, and will probably be considered reasonable under the circumstances. Though it appears that Carl was an equal initiator of the verbal confrontation, he did not cause Ned any apprehension of violence. **THUS CARL'S ARGUMENT OF SELF-DEFENSE WILL BE SUCCESSFUL.**

2.CARL V. NED

ASSAULT

A tortious ASSAULT is the intentional placing of another in reasonable apprehension of immediate harmful or offensive contact. The plaintiff must be apprehensive.

Here, Ned and Carl first "accidentally bump into each other." Since this was an accident, there was no intent, and therefore this did not constitute ASSAULT.

However, during a "loud argument," "Ned took several steps toward Carl" and Carl's response was to throw an orange at Ned. Given the context of the argument, Ned's taking several steps would reasonably put Carl, another, in apprehension of harmful or offensive contact.

NED IS LIABLE FOR ASSAULT.

BATTERY

A tortious BATTERY is the intentional causing of harmful or offensive contact to the person of another.

Ned "punched Carl in the stomach." When someone punches another in the stomach, intent is self-evident. "But for" Ned's punch, Carl would not have suffered harmful physical contact; thus Ned caused the contact with Carl. A punch in the stomach is inherently harmful contact. Since Ned intentionally caused harmful contact to Carl, the person of another, NED IS LIABLE FOR BATTERY.

DEFENSE TO ASSAULT AND BATTERY

SELF-DEFENSE

A person is entitled to protect him/herself with the degree of force necessary, if he reasonably believes another will imminently commit a violent act against him/her. Ned will argue that when "Carl threw an orange at Ned and grazed his pant leg," Ned was put in reasonable apprehension of imminent violence. However, Ned's response to a grazed pant leg was disproportionate, and Ned escalated the altercation to deadly force by punching Carl in the stomach. NED'S ARGUMENT OF SELF-DEFENSE WILL FAIL.

DEFAMATION

DEFAMATION is the publication to a third party of information "of and concerning the plaintiff" that is false and harms the plaintiff's reputation.

LIBEL is publishing the defamatory information in a manner that is fairly permanent, e.g., in a newspaper.

Normally, special damages do not need to be proved for any form of LIBEL, but they are certainly presumed for LIBEL PER SE. LIBEL PER SE is libelous publication of defamatory information that alleges:

- i) Unchastely
- ii) Commission of a crime of moral turpitude
- iii) A person is incompetent in his business or profession OR

iv) A loathsome disease (traditionally leprosy or a venereal disease)

Here, Ned "published an account of [the altercation between him and Carl]" and in the newspaper publication called Carl a "coward and a liar." This information was "of and concerning" Carl, and it was published to third parties (the newspaper's readers). Ned had nothing on which to base the allegation that Carl was a liar, and thus the information was false. Since Carl "experienced a substantial decrease in business consulting thereafter," it is arguable that the decrease was a result of the allegation. The publication clearly harmed Carl's reputation. Since being a "coward and a liar" clearly implies that a person is not competent as a business consultant, Ned's publication constitutes LIBEL PER SE and Carl does not need to prove special damages. Since Carl was not a public personality and this occurrence was not of public concern, there are no constitutional elements to be dealt with.

DEFENSES TO DEFAMATION

Ned will argue that he had the limited privileges of publishing an opinion, and of publishing a report of a public incident. However, Ned surpassed and thus made ineffective these privileges by showing malice, a reckless indifference to the truth or falsity of the allegations. NED'S DEFENSES TO DEFAMATION WILL FAIL.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

IIED is the intentional or reckless causing of severe emotional distress as a result of outrageous conduct ("beyond all decency tolerated by society").

The reasonable person knows that publishing an allegation in a newspaper that a businessperson is a "coward and a liar" is likely to cause that businessperson severe emotional distress. Thus, Ned's publishing this allegation to the readers of a local newspaper was done in a reckless or intentional manner. Publication of such a lie would constitute outrageous conduct.

NED IS LIABLE FOR IIED.

3.HOMEOWNERS V. SUPERSTORE

NUISANCE

A PRIVATE NUISANCE is a nontrespassory interference with a land possessor's use or enjoyment of his property. Bright lights are nontrespassory, but have been causing homeowners "loss of sleep and various adverse health consequences." Thus the lights have been interfering with the homeowners' use and enjoyment of their property. Since the homeowners have "complained," SuperStore has knowledge of the adverse effects, and the THE HOMEOWNERS MAY PURSUE AN ACTION IN INTENTIONAL TORT FOR PRIVATE NUISANCE AGAINST SUPERSTORE.

ANSWER B TO QUESTION 3

Ned v Carl

Assault

Assault is placing another in reasonable apprehension of imminent harmful touching.

Here Ned and Carl got into an argument at a supermarket. Ned will argue that Carl assaulted him when he threw an orange at him. Ned will state that after a heated exchange and Carl raising his arm to throw the fruit that he was in apprehension of imminent harmful contact. This will prevail because the act of raising your arm to volitionally throw something towards someone will be sufficient to sustain a claim for assault.

Battery

Battery requires the intentional harmful offensive touching of another without consent or privilege.

Here we have Carl throwing an orange at Ned after an argument. This fulfills the elements required for a battery because when Carl raised his arm, it was a volitional movement to throw the item at Ned, which satisfies the intentional element. The harmful and offensive touching occurred when Carl threw the fruit at his body. The facts indicate that the fruit grazed his pants but this will be sufficient to constitute offensive touching. There was no consent as Ned did not ask Carl to throw the fruit. Carl will be liable for battery.

Defense

Consent

Consent can be implied when one engages in harmful conduct with another.

Here Carl will argue that Ned consented to the harmful contact as he engaged in the argument and subsequent events that occurred. He will argue that his participation in the altercation will imply consent to the battery. This will likely not prevail as an argument.

Self Defense

Self defense is reasonable steps taken to prevent harm to oneself.

Here Carl will argue that he was acting in self defense as Ned was approaching him. He will state that there had been a heated argument and Ned approached him as the initial aggressor and as such he had a reasonable belief he would be harmed. This may likely prevail as the facts indicate that it was a heated argument and a person approaching you as it escalates would cause a reasonable apprehension that self defense is necessary.

Carl v Ned

Assault

Defined Supra. Here Carl will argue that Ned assaulted him as he took several steps toward him after they were arguing. Carl will argue that it was reasonable apprehension because they had just had a heated argument and he did not know Ned and when Ned took steps advancing upon him he was in reasonable apprehension of imminent harm. Carl will likely prevail in this argument and Ned will be liable for assault.

Battery

Defined Supra. Here the facts indicate that after Carl threw an orange at Ned, Ned punched him in the stomach. The elements for battery are met because it was intentional as punching someone in the stomach is a volitional act. This would be harmful and offensive touching because it would hurt and there would be no consent as

he did not ask to be punched or indicate that he wanted to be punched. Ned will be liable for battery.

Defamation

Defamation requires a defamatory statement by D, of or concerning P, published to a third party who understands it to refer to P, and damage to the reputation. A defamatory remark is one that causes a person to be shunned, hated, loathed or avoided or causes injury to a person reputation.

Slander/Libel

A statement is slander if it is spoken and libel if it is printed. A statement is libel on its face or slander per se if it imputes a loathsome disease, a want of chastity, a crime of moral turpitude or is injurious to one's occupation. If the person defamed is a public figure and the matter is of public concern they must prove falsity and fault. If person is private figure and the matter is of private concern the P must prove fault and mere negligence.

Here Carl will bring an action against Ned for defamation. Carl will argue that the statement that he was a liar and a coward was defamatory and damaged his reputation. He will further argue that when he published it in the newspaper that he worked for, it was publicated to a third party and that he used his name and described the incident would cause others to understand that it was referred to him. Carl will argue that his business and reputation was damaged in this publication. Carl will argue that this statement is libel because it was printed and in a permanent form and widely read. He will further assert that this statement was libel on its face because Ned said he was a coward and a liar. Carl will argue that as a business consultant his customers expect honesty and to publicly call him a liar is deliberately injurious to his occupation. The courts may not determine that this is an "on its face" statement because Ned did not specifically state that he could not perform his occupation or was inept directly,

therefore Carl will have to prove special damages and will not get presumed damages for a statement being libel on its face.

Fault

Fault requires proving malice. Malice is knowledge of falsity or entertaining serious doubts as to the truthfulness before publishing something.

Here Carl will argue that Ned was acting with malice as he was maliciously and recklessly printing the incident and calling him injurious names after the altercation. Carl will assert that he was negligent in printing the statement as he had a duty as a professional newsman to accurately report the news and not incidents that he embellished out of spite. Carl will prevail in this argument.

Damages

Carl will show that he was injured in his occupation as a result of Ned's negligent publication. He will show that his business has substantially declined as a result of the remarks made by Ned. Carl will be entitled to general damages that he can show as a result and possibly punitive damages as the statements were made negligently and maliciously.

Ned's Defense

Battery/Assault

Self Defense-supra. Ned will argue that his use of force upon Carl was warranted as it occurred during a heated argument and he was in reasonable apprehension of being harmed by Carl. This will not prevail because Ned exceeded the scope of his defense by being the initial aggressor and using more force than was given. He will be liable for the assault and battery.

Privileged Opinion

Ned will argue that his statements were opinion and as such he was entitled to make the statements. This will not prevail because opinions are actionable if they appear to be based on fact, as with the case here.

Homeowners v Supermarket

Nuisance

Nuisance requires the interference with enjoyment or possession of property. Persons can seek public nuisance action or private nuisance action.

Public Nuisance

Public Nuisance requires a substantial interference with the enjoyment and possession of property by the community at large and the P suffered a particular type of injury that is different from the public.

The homeowners will bring a claim of public nuisance against the store as the bright lights are interfering with their sleep and causing health problems. Homeowners will argue that the use of lights is excessive and an unreasonable interference. This will likely not prevail as the courts will look to the utility of the harm versus the interference and determine that bright lights a few times a week is not a substantial interference. Further the homeowners could use room darkening shades to mitigate the effect of the lights. Further, Supermarket will argue that this claim is a claim shared by the public at large and there is not an individual claim that is distinct and therefore they are not liable. The courts will likely agree as it is in a matter of public safety to prevent harm to others and lights on occasionally at night are not unreasonable interference and there are not individual damages. Supermarket will not be liable for public nuisance.

Private Nuisance

Private Nuisance requires a substantial and unreasonable interference with the right to enjoyment and possession of property in rightful possession and damages.

Here the homeowners will argue that the use of bright lights several times a week is harmful to their sleep and health. The store will counter that the lights are not substantial and unreasonable interference as it occurs occasionally and during the middle of the night and the gravity of the harm sought to be prevented, injury to customers or people on the premises is a greater utility than homeowners placing darkening shades on their windows. The courts will likely decide that this interference is not substantial enough to sustain a private nuisance claim.

Negligence

Negligence requires duty breach, actual cause and proximate cause and damages.

Duty

A duty is owed to act as a reasonable person would in the same or similar situation. Under the Andrews view a duty is owed to all of society and under the Cardoza view a duty is owed to foreseeable P's in the zone of danger.

Here Homeowners will argue that a duty is owed to act as a reasonable neighbor and not create a harmful and interfering situation. Under the Andrews and Cardoza view, duty is met.

Breach

Breach is falling below the standard of care.

Here Homeowner will argue that store fell below the standard of care when they shined the bright lights in their windows several times per week. Store will argue that the gravity of risk harm is not outweighed by the utility of keeping the lights on.

Actual Cause

Actual cause is established with the but for test. But for D's acts, the harm would not have occurred.

Homeowners will argue that but for the bright lights on several times nightly they would not be sleep deprived and have health problems.

Prox Cause

Prox cause requires D is liable for all foreseeable results of their conduct. Homeowners will argue that it is a foreseeable event that they would lose sleep over bright lights shined into their windows several times per week.

Damages

Damages are injuries suffered by breach of duty by D.

Here homeowners will argue that they suffered damages in loss of sleep and adverse health effects from the bright lights. Homeowners will likely prevail in their negligence claim against store as opposed to their nuisance claim and Store will be liable for their damages.

Question 4

After dinner, Alvin felt ill. Although he thought he might have indigestion, he was short of breath and was experiencing chest pains, well-known symptoms of a heart attack. He drove himself to the emergency room at a local hospital.

At the emergency room, Alvin described his symptoms to Nick, an experienced screening nurse. Donna was the physician on duty. She had already worked a fourteen-hour shift and was eager to go home. Without examining Alvin, Donna concluded that he had indigestion, relying on Nick's statement of his symptoms. She sent him home, recommending that he take some bicarbonate of soda.

On the drive home, Alvin collapsed behind the wheel of his car. He veered into oncoming traffic, struck a truck, and died instantly. If Alvin had been examined by Donna, he would not have collapsed behind the wheel of his car.

With what crimes, if any, can Donna reasonably be charged? Discuss.

ANSWER A TO QUESTION 4

I. State vs. Donna

Did Donna's act result in a homicide of Alvin?

Homicide is an act of a human being that causes the death of another human. Here, the main issue will arise when determining whether Donna was the legal cause of Alvin's death.

Actual cause is determined by use of the but for test. But for Donna diagnosing Alvin "without examining Alvin," who was experiencing well-known symptoms of a heart attack, he would not have been released to drive himself home and collapse behind the wheel resulting in his death. Donna is the actual cause of Alvin's death.

Proximate/legal cause is determined where the accused is justly held liable for the results of the foreseeable injury her acts caused. Where the injury is a result of an independent unforeseeable act, then the accused may not be held to be the legal cause of the injury, but where the injury is dependent upon the accused acts or the intervening cause is foreseeable, the accused would most likely be the legal cause of the injury. Here, the facts state that "if Alvin had been examined by Donna, he would not have collapsed behind the wheel of his car," thus it can be inferred that the intervening heart attack was a foreseeable consequence of Donna's failure to examine Alvin therefore Donna is most likely the proximate/legal cause of Alvin's death due to his heart attack and collapse while driving himself home.

Also, Donna may also be considered to have a special relationship as a treating physician which would arguably create a duty to reasonably aid Alvin, and here Donna does not reasonably provide aid to Alvin because she had "already worked a fourteen-hour shift and was eager to go home, thus it can be inferred that Donna did not perform her duty to act, thus she is the legal cause of Alvin's death.

Murder

Commonly, murder is the killing of a human being with malice aforethought. Malice aforethought is present when there are no facts to mitigate the crime to manslaughter, and there is the presence of at least one of the following mental states: Intent to kill, Intent to cause great bodily harm, reckless disregard for an unjustifiable and substantial risk to human life, and during commission of inherently dangerous felony.

Intent to Kill

The accused must exhibit an intention to kill the victim. Here, Donna does not have an intent to kill Alvin, thus this mental state would not be applicable.

Intent to Cause Bodily Harm

Here there are no facts present to indicate Donna possessed the intention to cause serious bodily harm on Alvin, thus this mental statement would not be applicable.

Reckless disregard

Here, the facts state that Donna, being eager to go home after a fourteen-hour shift, failed to examine Alvin before diagnosing Alvin and sending him home, thus it can be argued by the state that she recklessly disregarded the potential for injury to Alvin. Donna may argue that she relied on Nick, an experienced screening nurse's" explanation of the symptoms, in order to diagnose Alvin, however, the facts state that if Donna would have examined him, then he would not have collapsed, therefore it can be inferred that Donna recklessly disregarded a risk of injury to life that she should have known existed due to the well known symptoms of heart attack exhibited by Alvin including chest pains and short breath, therefore Donna would reasonably be charged with common law murder under a theory of reckless disregard for human life.

First Degree Murder

First degree murder occurs where there is premeditation and deliberation done prior to the killing. Here, Donna does not intend to kill Alvin, so 1st degree murder would not apply.

Second Murder

All other killings that are not premeditated may be considered 2nd degree murder where there is the presence of malice. Here, Donna did not intend to kill Alvin, but she may have acted in a way that unreasonably and unjustifiably disregarded a known risk to human life. Here, if Donna would have examined him, then Alvin would not have collapsed, therefore it can be inferred that Donna recklessly disregarded a risk of injury to life therefore she would be reasonably charged with 2nd degree murder.

Manslaughter is the killing of a human being without malice aforethought, but with adequate provocation. Here, Donna was not provoked when she failed to examine Alvin, thus it can be inferred that Donna cannot be reasonably charged with manslaughter at common law.

Involuntary Manslaughter

Involuntary manslaughter is present where the accused acted intentionally and disregarded a risk to human life that she did not know was present, but should have known. Here, Donna did not commit an intentional act that caused Alvin's death, but she failed to examine Alvin which ultimately caused his death. The facts state that "if Alvin had been examined by Donna, he would not have collapsed behind the wheel of his car," thus it can be inferred that Donna, who is a physician, should have known by the symptoms described by Nick and her experience as a physician, that Alvin was possibly suffering from heart attack symptoms, and in the very least those symptoms required her to examine Alvin to make sure it was merely indigestion. The fact that Donna was eager to go home have caused her disregard for a risk of life that she

should have known existed, thus it can be inferred that Donna may reasonably be charged with involuntary manslaughter.

ANSWER B TO QUESTION 4

STATE v. DONNA

HOMICIDE

Homicide is the unlawful killing of another, which includes murder and manslaughter. In this case, Alvin collapsed behind the wheel of his car and was killed after being examined and misdiagnosed by a physician, Donna. Therefore, we must examine the question of whether a homicide occurred in this case.

MURDER

Murder is the unlawful killing of another with malice aforethought. Malice aforethought can be proven in one of four ways: (1) Intent to kill; (2) intent to inflict serious bodily injury; (3) an extremely reckless disregard for an unjustifiably high risk to human life; or (4) under the Felony Murder Doctrine. Here, the prosecution will argue that Donna displayed an extremely reckless disregard for an unjustifiably high risk to Alvin's life by failing to thoroughly examine him in the ER and then misdiagnosing him. Thus, Donna killed Alvin with malice aforethought.

Causation

Actual

To sustain a conviction for murder or manslaughter, the prosecution must show that Alvin's death would not have occurred in the absence of Donna's conduct. Actual causation is determined through application of the "but for" test. Here, the prosecution will argue that Alvin's death would not have occurred but for Donna's failure to conduct a thorough examination of him and subsequent misdiagnosis of his condition. Therefore, the prosecution will successfully establish actual causation.

Proximate

To sustain a conviction for murder or manslaughter, the prosecution must show that Alvin's death was foreseeable and that there was no intervening event which would break the chain of causation. In this regard, the prosecution will argue that it is foreseeable that Alvin's death would occur as a result of Donna's failure to conduct a thorough examination of him and subsequent misdiagnosis of his condition. Thus, proximate causation will be successfully established.

Affirmative Duty to Act

One has an affirmative duty to act if: (1) there is a special relationship between the parties; or (2) there is a contractual obligation to do so; or (3) there is a statutory requirement to do so; or (4) the defendant has voluntarily assumed the duty of plaintiff's care; or (5) the defendant has created the peril. In this case, the prosecution will argue that Donna was contractually obligated to perform a thorough examination of Alvin under a doctor-patient contract based on the fact that Alvin had entered the ER and Donna was the physician on duty at the time that Alvin entered the ER. Therefore, Donna had an affirmative duty to perform a thorough examination of Alvin. Her failure to do so constitutes an omission of her duty.

Felony Murder Doctrine

Under the Felony Murder Doctrine, a first degree murder charge is applied to any death which occurs during commission of or in the attempt of a dangerous felony (burglary, arson, rape, robbery and/or kidnapping). However, there is no evidence to indicate that Donna was committing or attempting any dangerous felony at the time of Alvin's death. As such, the Felony Murder Doctrine does not apply here.

First Degree Murder

First degree murder is the unlawful killing of another with premeditation and deliberation, and specific intent to kill. However, there is no evidence to indicate that

Donna specifically intended to kill Alvin. Therefore, Donna may not properly be charged with first degree murder in this case.

Second Degree Murder

Second degree murder is the unlawful killing of another with a state of mind characterized as a wanton or an extremely reckless disregard for an unjustifiably high risk to human life. All murder other than first degree murder is second degree murder, which is a malice crime. Here, the prosecution will argue that Donna displayed an extremely reckless disregard for the high risk to Alvin's life by failing to conduct a thorough examination of him and by her subsequent misdiagnosis of his condition. As such, Donna may properly be charged with second degree murder.

Voluntary Manslaughter

Voluntary manslaughter is a killing that would be murder but for the existence of adequate provocation. Provocation is adequate only if: (1) it was a provocation that would arouse sudden and intense passions in the mind of an ordinary person causing him to lose self control; and (2) the defendant was in fact provoked; and (3) there was not adequate time between provocation and killing for the passions of a reasonable person to cool; and (4) the defendant in fact did not cool off between provocation and killing. However, there is no evidence to indicate the existence of adequate provocation in this case.

Involuntary Manslaughter

Involuntary manslaughter is an unintentional killing which occurs as a result of defendant's gross criminal negligence or during commission of a misdemeanor (under the Misdemeanor Manslaughter Rule). Alvin's death did not occur during commission of a misdemeanor by Donna.

Criminal Negligence

However, the defense may argue that Alvin's death was unintentional and that Donna displayed a conscious disregard for a substantial and unjustifiable risk to Alvin's life. Further, Donna's state of mind was insufficiently wanton to sustain a conviction for second degree murder. A Trier of fact will likely agree with this argument and, as a result, the defense will be successful in mitigating Donna's murder charge to involuntary manslaughter.

DEFENSES

There are no viable defenses available to Donna.

CONCLUSION

Donna is guilty of involuntary manslaughter.