



California Essay Critiques

Applicant: Doe

Essay 1: Criminal Law

Essay Critique

This document contains your completed essay critique. If you have any questions with respect to this, please contact me via e-mail.

History

| Date | Action | By |
|-----------|----------------------------|----------|
| 2/04/2010 | Question sent to Applicant | LawPrism |
| 2/05/2010 | Answer received | LawPrism |
| 2/06/2010 | Critique sent | LawPrism |

ESSAY QUESTION

Sam mistakenly believed that he was incurably ill and would soon die a painful death. Sam decided to end his own life but in order not to deprive his family of the proceeds of his life insurance (which were not payable in case of suicide) Sam asked Mel, an ex-convict, to kill him (Sam) and make it look like a robbery. Sam said that he would pay Mel \$1,000 by leaving the money in his pocket for Mel to take after Mel perpetrated the killing. Mel agreed to the plan, and Sam told Mel to come to his house that evening.

Mel arrived at the appointed time. After being ushered into the living room by Sam, Mel pulled a knife and announced that he had changed his mind and was not going to go through with the plan, but that he had come to steal Sam's family jewels. Sam replied that Mel would have to kill him to get the jewels. Sam began to advance on Mel saying, "Go ahead, kill me; that's the plan." Mel backed away uncertainly saying, "I don't want to kill you." A second later Sam's seventeen-year-old son, Bill, entered the room, saw Mel with a knife in his hand and lunged at Mel. In the ensuing struggle, Mel was killed when he accidentally fell on the knife.

Discuss the criminal liability of Sam for Mel's death.

YOUR OUTLINE

Mistake of Fact

Sam mistakenly believed he was incurably ill and would soon die a painful death

Rule: Requires mistake to negate the criminal state of mind

Here: Sam decided to end his own life because he of his mistaken belief

Rule: Mistake must be reasonable if general intent crime, any mistake is a defense to specific intent crime

Isn't his mistake too far removed from the details of the incident to constitute an excuse?

Murder for Hire

Here: Sam asked Mel an ex-con to kill him (Sam) and make it look like a robbery

Rule: By soliciting Mel to kill him, Sam has committed a conspiracy to commit murder

Rule: Murder is a general intent crime as the only intent required is to kill the other person, to commit the proscribed act

Conspiracy

Sam said he would pay Mel \$1K to kill him (Sam) and leave the money in his pocket for Mel to take after he perpetrated the crime

Rule: Conspiracy requires an agreement between 2 or more people to commit an unlawful act

Here: Mel agreed to the plan and Sam told Mel to meet at his house that night

Wasn't there also a conspiracy to commit insurance fraud?

Renunciation

Rule: A party may renunciate a crime before perpetrating it if they decide not to go through with the act and prevent the crime from occurring

Here: Mel arrived at Sam's house at appointed time but after being led into Sam's living room, Mel pulled a knife and announced he changed his mind and was not going to go thru with the plan

YOUR OUTLINE

Robbery

Rule: Robbery is the taking of another's property by force or fear with intent to permanently deprive the owners thereof

Here: Mel announced he came to steal Sam's family jewels, after pulling out a knife in Sam's living room

Sam began to advance on Mel saying "Go ahead, kill me; that's the plan"

Mel backed away uncertainly, saying "I don't want to kill you."

Rule: Even though Mel had tried to back away from the plan to kill Sam, Sam was not about to allow Mel to abandon their plan. Renunciation of the crime may not be successful as it came too late.

Here: Mel perhaps should not have shown up at Sam's if he decided not to kill him after all

How is this related to the call of the question? What could Sam's liability be for robbery of himself?

Defense of Others

Rule: A person has the privilege to use force in the defense of another, the amount of force used is the same as that which the person being defended is privileged to use

Here: Sam's 17 yr old son Bill entered the room and saw Mel with a knife in his hand and lunged at Mel to defend his father

Rule: Deadly force may be defended against using deadly force

What does this have to do with Sam?

Transferred Intent

Rule: The intent to kill that both Sam and Mel had as part of their agreement to have Sam killed as part of an insurance fraud scheme so Sam's family may collect life insurance benefits after Sam's death may be transferred to the death of Mel

Here: In the ensuing struggle after Mel's son lunged at Mel who had a knife in his hand, Mel was killed when he accidentally fell on the knife

It might be useful to place your thoughts about the implications of the facts directly into your outline.

YOUR OUTLINE

Criminal Liability of Sam

Rule: In a conspiracy, the co-conspirators are liable for all acts foreseeably arising from the commission of the conspiracy

Here: If the conspiracy between Sam and Mel to kill Sam was not renounced or abandoned when Mel changed his mind about killing Sam and decided to rob him instead, then any acts foreseeably arising from the conspiracy is attributed to co-conspirators, including the death of one party

Conclusion: Sam is liable for Mel's death because were it not for their agreement to kill Sam, Mel's accidental death would likely not have occurred. Mel's death is a foreseeable consequence of the conspiracy.

How foreseeable is it that Mel would instead try to rob Sam's family jewels? And how is that an act in furtherance of the target of the conspiracy?

Or: Mel's death was unforeseeable because had he just killed Sam as agreed, he likely would not have died (?)

You haven't linked up the elements of each rule with the facts that prove or disprove it. You also haven't made use of all the facts, and haven't expanded the issues

YOUR ESSAY ANSWER

Discuss Sam's criminal liability for Mel's death

Conspiracy

For Sam to be found criminally liable for Mel's death, there must be a criminal act and the concurrence of the requisite mental state. Here, Sam and Mel enter into a conspiracy to end Sam's life. The plan was for Mel to kill Sam so Sam's family could collect on a life insurance policy, which was not payable in the event of suicide. The criminal act that Sam and Mel are liable for is conspiracy to kill Sam. In return, Mel would receive \$1,000 payment. The required mens rea for murder is either an intent to kill or intent to commit serious bodily harm. Here, both Mel and Sam have the intent to kill because the objective of the conspiracy was to end Sam's life. If the required intent and mental state concur to cause the death of Sam, then criminal liability may attach even if Sam consented to the killing. Here, it was Mel who ended up dead. So the issue is whether Sam is liable criminally for Mel's death. This depends on whether Sam has a defense, excuse or justification for the killing.

Mistake of Fact

The excuse of mistake of fact requires the mistake negate the criminal state of mind. Here,

Sam decided to end his own life because he mistakenly believed he was incurably ill and would soon die a painful death. Sam would argue that were it not for his mistaken belief, he would not have planned to kill himself. A mistake of fact is available as a defense if the crime is a general intent crime only if the mistake was reasonable. Any mistake of fact, whether reasonable or not, is available as a defense for specific intent crimes.

Conspiracy is a specific intent crime since two different mental states are required: intent to agree to commit an unlawful act, and commission of that act. Because conspiracy is a specific intent crime, any mistake of fact is available as an excuse to the crime, whether reasonable or not. Here Sam's mistake about his incurable illness is not reasonable because a second opinion from a different doctor would have corrected his mistake.

Conspiracy

A conspiracy is the agreement between 2 or more people to commit an unlawful act. The deliberate killing of a human being is an unlawful act. Here Sam and Mel agreed that Mel would kill Sam so that Sam's family could collect on Sam's life insurance policy. Mel agreed to the plan and would be paid \$1,000 to commit the act. A conspiracy formed as Mel and Sam agreed to have Sam killed.

Murder

Murder is the killing of a human being with malice aforethought. The four types of malice include: intent to kill, intent to cause serious bodily harm, depraved heart murder or felony murder. Murder is divided into first degree murder, which requires premeditation and deliberation. Here, Sam and Mel planned Sam's death, which shows premeditation and the plan would be carried out in Sam's home, showing deliberation in carrying out the killing. Mel was to kill Sam and make it look like a robbery. By soliciting Mel to kill him, Sam committed a conspiracy to commit first degree murder. However, Sam's plan did not go according to plan, as Mel changed his mind and decided instead to rob Sam's home for the family jewels when he came over instead. Mel may

YOUR ESSAY ANSWER

believe he has abandoned the conspiracy and renounced the crime of conspiracy.

Renunciation

A party may renounce a crime before perpetrating it if they decide not to go through with the act and can prevent the crime from occurring. Here, Mel arrived at Sam's house at the appointed time but after being led into Sam's living room, Mel pulled a knife and announced he changed his mind and was not going to go thru with the plan. Because Mel had taken an overt act by coming over to Sam's home with a knife, it may be that he has gone too far to renounce the conspiracy.

Robbery

Robbery is the taking of another's property by force or fear with intent to permanently deprive the owners thereof. Here, Mel announced to Sam that he came to steal Sam's family jewels, after pulling out a knife in Sam's living room. Sam however wanted to stick with the plan and began to advance on Mel saying "Go ahead, kill me; that's the plan." Mel insisted that he didn't want to kill Sam and backed away uncertainly. Even though Mel had tried to back away from the plan to kill Sam, Sam was not about to allow Mel to abandon their plan. Renunciation of the agreement to commit the crime may not be successful as it came too late. Mel perhaps should not have shown up at Sam's if he decided he didn't want to kill Sam after all.

Foreseeable Acts Arising Out of Conspiracy

Co-conspirators to a crime are liable not only for the target crime of the conspiracy, but for all foreseeable crimes or acts arising out of the conspiracy. Here, Sam and Mel agreed to the killing of Sam for insurance money. Were the acts that arose out of the agreement foreseeable such that Sam and Mel would anticipate they would occur as a consequence of their agreement?

Defense of Others

A person has the privilege to use force in the defense of another, the amount of force used is the same as that which the person being defended is privileged to use. Here, Sam's 17 yr old son Bill entered the room and saw Mel with a knife in his hand and lunged at Mel to defend his father. Since deadly force may be used to defend against using deadly force, and Mel was wielding a knife, Bill was privileged to use deadly force to protect his father Sam. Sam is therefore also privileged to use deadly force to defend himself against Mel's actions. Sam therefore has the defense that he was defending himself when Mel accidentally fell on his own knife and killed.

Transferred Intent

The intent to kill that both Sam and Mel had as part of their conspiracy agreement to have Sam killed so Sam's family may collect life insurance benefits after Sam's death may be transferred to the death of Mel. If an actor has the intent to commit one crime against one person, and in the process the crime is committed against another person instead, the doctrine of transferred intent may be used to hold the actor liable for the second crime.

Here, in the ensuing struggle after Sam's son lunged at Mel who had a knife in his hand, Mel was killed when he accidentally fell on the knife. Sam may be held liable for Mel's

YOUR ESSAY ANSWER

death as the intent to kill Sam was transferred to Mel.

Criminal Liability of Sam

In a conspiracy, the co-conspirators are liable for all acts foreseeably arising from the commission of the conspiracy. If the conspiracy between Sam and Mel to kill Sam was not renounced or abandoned by Mel who changed his mind about killing Sam, then any acts foreseeably arising from the conspiracy is attributed to co-conspirators, including the death of one party. Sam is liable for Mel's death because were it not for their agreement to kill Sam, Mel's accidental death would likely not have occurred. Mel's death is a foreseeable consequence of the conspiracy. However, Sam may still use the defense that he was faced with deadly force and defended himself by struggling with Mel for the knife, and as a result, Mel was killed.

ESSAY CRITIQUE

Discuss Sam's Criminal Liability for Mel's Death

Conspiracy

For Sam to be found criminally liable for Mel's death, there must be a criminal act and the concurrence of the requisite mental state. Here, Sam and Mel enter into a conspiracy to end Sam's life. The plan was for Mel to kill Sam so Sam's family could collect on a life insurance policy, which was not payable in the event of suicide. The criminal act that Sam and Mel are liable for is conspiracy to kill Sam. In return, Mel would receive \$1,000 payment. The required mens rea for murder is either an intent to kill or intent to commit serious bodily harm.

Incorrect. The required mens rea for murder can be found in four ways: intent to kill, intent to commit SBI, depraved heart, or felony murder.

Here, both Mel and Sam have the intent to kill because the objective of the conspiracy was to end Sam's life.

You're addressing the wrong death here. Where is the intent to kill Mel?

If the required intent and mental state concur to cause the death of Sam, then criminal liability may attach even if Sam consented to the killing. Here, it was Mel who ended up dead. So the issue is whether Sam is liable criminally for Mel's death. This depends on whether Sam has a defense, excuse or justification for the killing.

You missed the fact that they had also conspired to commit insurance fraud. You've also placed your conclusion ("The criminal act that Sam and Mel are liable for is conspiracy to kill Sam") at the beginning of your essay. Never summarize or relate your conclusions until after you've done your analysis.

What does Mel's liability have to do with Sam's liability for Mel's death?

How was Mel's death related to the target crime of the conspiracy? If it wasn't, wouldn't the conspiracy be irrelevant?

Sam's liability doesn't depend on whether he has a defense, excuse, or justification for the killing. There was no killing, there just was an accidental death. But even if there was a killing, all the elements of murder or a lesser-included offense would have to be shown, including causation. Thus, Sam's liability hinges on far more than just his possible defenses.

ESSAY CRITIQUE

Mistake of Fact

This is a defense. Do not discuss defenses until you've already thoroughly discussed all the relevant charges.

The excuse of mistake of fact requires the mistake negate the criminal state of mind.

Incorrect. Mistake of Fact is a defense if it negates an element of the crime, and did not result from the defendant's fault.

Here, Sam decided to end his own life because he mistakenly believed he was incurably ill and would soon die a painful death. Sam would argue that were it not for his mistaken belief, he would not have planned to kill himself. A mistake of fact is available as a defense if the crime is a general intent crime only if the mistake was reasonable. Any mistake of fact, whether reasonable or not, is available as a defense for specific intent crimes.

In certain circumstances, mistake of fact may negate the element of a specific intent crime that requires that the acts be done knowingly or purposely. State v. Snowden, 7 Ohio App. 3d 358, 455 N.E.2d 1058 (10th Dist. Franklin County 1982). The mistaken belief that Sam was dying has no relationship to any element of any crimes committed in this fact pattern.

Conspiracy is a specific intent crime since two different mental states are required: intent to agree to commit an unlawful act, and commission of that act.

Technically this is incorrect: commission of the act isn't required, merely an overt act in furtherance of the conspiratorial goal.

Because conspiracy is a specific intent crime, any mistake of fact is available as an excuse to the crime, whether reasonable or not.

Incorrect. Sometimes the issue arises whether a mistake of fact that would not defeat liability for the target offense nevertheless defeats liability for conspiracy. The argument that it does is sometimes couched in logical or conceptual terms. For example, Judge Learned Hand wrote, "While one may, for instance, be guilty of running past a traffic light of whose existence one is ignorant, one cannot be guilty of conspiring to run past such a light unless one supposes that there is a light to run past" (United States v. Cummins, 123 F.2d 271, 273 (1941)). But other courts, including the U.S. Supreme Court in United States v. Feola, 420 U.S. 672, 693 (1975), have taken a more pragmatic stance, reasoning that the mental state element of the conspiracy charge should mirror that of the substantive offense "unless one of the policies behind the imposition of conspiratorial liability [would] not [be] served by such a result." The Model Penal Code makes this an issue to be resolved on a case-by-case basis (MPC 1985, commentary on § 5.03, at 4.13).

ESSAY CRITIQUE

Here Sam's mistake about his incurable illness is not reasonable because a second opinion from a different doctor would have corrected his mistake.

What does this have to do with Sam's liability for Mel's death?

This kind of mistaken belief does not negate liability for a crime, nor for conspiracy to commit a crime. For example, if you held the mistaken belief that one wouldn't be able to find employment by the time your bank account ran out and you were afraid that you and your family would starve, in no way does that justify or excuse going out and robbing a bank.

How do you know that a second opinion from a different doctor would have corrected his mistake? What if he would have had to go to six doctors before getting the correct answer? More importantly, how is it unreasonable not to get a second opinion? Most people don't.

Where is your conclusion?

Conspiracy

A conspiracy is the agreement between 2 or more people to commit an unlawful act. The deliberate killing of a human being is an unlawful act. Here Sam and Mel agreed that Mel would kill Sam so that Sam's family could collect on Sam's life insurance policy. Mel agreed to the plan and would be paid \$1,000 to commit the act. A conspiracy formed as Mel and Sam agreed to have Sam killed.

You already have a section discussing Conspiracy. Place all relevant rules, analysis, and conclusions in one place.

ESSAY CRITIQUE

Murder

Murder is the killing of a human being with malice aforethought. The four types of malice include: intent to kill, intent to cause serious bodily harm, depraved heart murder or felony murder. Murder is divided into first degree murder, which requires premeditation and deliberation. *Incorrect. Modernly, murder is divided into degrees, with first degree murder requiring premeditation and deliberation and all other kinds of murder being in the second degree.*

You do not need to discuss degrees of murder if the word “degree” is not in the call of the question.

Here, Sam and Mel planned Sam’s death, which shows premeditation and the plan would be carried out in Sam’s home, showing deliberation in carrying out the killing. Mel was to kill Sam and make it look like a robbery. By soliciting Mel to kill him, Sam committed a conspiracy to commit first degree murder. However, Sam’s plan did not go according to plan, as Mel changed his mind and decided instead to rob Sam’s home for the family jewels when he came over instead. Mel may believe he has abandoned the conspiracy and ~~renounced~~ renounced the ~~crime of~~ conspiracy.

A discussion of Murder needs to focus on the four different types of murder and go through an analysis of each one. Here, you haven’t addressed any of them. You also haven’t addressed the element of causation, which is absolutely critical in this fact pattern since Mel died accidentally while not furthering the conspiracy.

Your analysis thus far has relied on the assumption that Mel’s death was legally related to the conspiracy. I don’t think it was, but in either case you need to address both possibilities.

Even if the conspiracy was still active when Mel died, don’t you need to show that Mel’s death was a crime? Would this fall under Felony Murder? I don’t think so, since co-felons are not liable for the death of another co-felon unless there was a gun battle.

Whenever you discuss Murder, you must also discuss the lesser-included offenses: Voluntary Manslaughter and Involuntary Manslaughter.

Renunciation

A party may ~~renunciate~~ renounce a crime before perpetrating it if they decide not to go through with the act and can prevent the crime from occurring. Here, Mel arrived at Sam’s house at the appointed time, but after being led into Sam’s living room, Mel pulled a knife and announced he changed his mind and was not going to go ~~through~~ through with the plan. Because Mel had taken an overt act by coming over to Sam’s home with a knife, it may be that he has gone too far to ~~renunciate~~ renounce the conspiracy.

Why are you focusing on Mel when the call of the question asks about Sam? If the point of this is that the conspiracy will cease to exist due to the Wharton Rule, then mention that.

ESSAY CRITIQUE

Robbery

Robbery is the taking of another's property by force or fear with intent to permanently deprive the owners thereof. Here, Mel announced to Sam that he came to steal Sam's family jewels, after pulling out a knife in Sam's living room. Sam however wanted to stick with the plan and began to advance on Mel saying "Go ahead, kill me; that's the plan." Mel insisted that he didn't want to kill Sam and backed away uncertainly. Even though Mel had tried to back away from the plan to kill Sam, Sam was not about to allow Mel to abandon their plan.

This is just a recapitulation of the facts with no analysis or tying them to elements. Never use "bare facts."

Renunciation of the agreement to commit the crime may not be successful as it came too late. Mel perhaps should not have shown up at Sam's if he decided he didn't want to kill Sam afterall

Not all crimes by co-conspirators are attributable to every member of the conspiracy. Co-conspirators are only liable for crimes committed by co-conspirators in furtherance of the target crime of the conspiracy. This robbery was not part of the target crime, and therefore Sam has no liability for it.

In addition, the call of the question asks what Sam's criminal liability is for Mel's death, not what all his criminal liability would be. The fact that Mel died has no connection to Sam being potentially liable for Robbery (although he most certainly wouldn't be); consequently, this should not have been discussed.

The facts clearly state that Mel showed up because he intended to rob Sam's family jewels, show suggesting that he now show up is irrelevant. Further, because Mel did withdraw from the target crime and was the sole person responsible for the planned committing of the crime, hadn't he actually thwarted the crime? Couldn't you argue that his coming to the house wasn't an overt act in furtherance of the target crime because he'd decided before he came over not to go through with it?

Foreseeable Acts Arising Out of Conspiracy

Co-conspirators to a crime are liable not only for the target crime of the conspiracy, but for all foreseeable crimes or acts arising out of the conspiracy. Here, Sam and Mel agreed to the killing of Sam for insurance money. Were the acts that arose out of the agreement foreseeable such that Sam and Mel would anticipate they would occur as a consequence of their agreement?

Never pose a question in an essay; there should be no question marks in your prose, only potentially in head notes. Instead write something like:

The issue is whether the acts that arose out of the agreement were foreseeable, such that Sam and Mel would anticipate they would occur as a consequence of their agreement.

You've posed this question, but you haven't analyzed or answered it at all.

ESSAY CRITIQUE

Defense of Others

A person has the privilege to use force in the defense of another, the amount of force used is the same as that which the person being defended is privileged to use. Here, Sam's 17 yr old son Bill entered the room and saw Mel with a knife in his hand and lunged at Mel to defend his father. Since deadly force may be used to defend against using deadly force, and Mel was wielding a knife, Bill was privileged to use deadly force to protect his father Sam. Sam is therefore also privileged to use deadly force to defend himself against Mel's actions. Sam therefore has the defense that he was defending himself when Mel accidentally fell on his own knife and killed.

But Sam wasn't defending himself against Mel! In fact, he was doing the opposite. How are Bill's actions attributable to Sam?

Transferred Intent

The intent to kill that both Sam and Mel had as part of their conspiracy agreement to have Sam killed so Sam's family may collect life insurance benefits after Sam's death may be transferred to the death of Mel. If an actor has the intent to commit one crime against one person, and in the process the crime is committed against another person instead, the doctrine of transferred intent may be used to hold the actor liable for the second crime.

But Mel "was killed when he accidentally fell on his knife" – nobody killed him!

Here, in the ensuing struggle after Sam's son lunged at Mel who had a knife in his hand, Mel was killed when he accidentally fell on the knife. Sam may be held liable for Mel's death as the intent to kill Sam was transferred to Mel.

Your argument here is that since Mel intended to kill Sam, then Sam can be held to be liable for killing Mel. That's incorrect. First, you cannot transfer intent from one criminal actor to another criminal actor except perhaps under some vicarious liability theory (i.e., conspiracy, accomplice liability, accessory); "transferred intent" refers to transferring the intent to harm one victim to another, unintended victim, by the same criminal actor. Second, Sam didn't have any intent to kill anybody at all, and in fact he didn't.

ESSAY CRITIQUE

Criminal Liability of Sam

In a conspiracy, the co-conspirators are liable for all acts foreseeably arising from the commission of the conspiracy. If the conspiracy between Sam and Mel to kill Sam was not ~~renounced~~ **renounced** or abandoned by Mel who changed his mind about killing Sam, then any acts foreseeably arising from the conspiracy is attributed to co-conspirators, including the death of one party. Sam is liable for Mel's death because were it not for their agreement to kill Sam, Mel's accidental death would likely not have occurred. Mel's death is a foreseeable consequence of the conspiracy. However, Sam may still use the defense that he was faced with deadly force and defended himself by struggling with Mel for the knife, and as a result, Mel was killed.

You have already addressed all of this. Keep your essay answer logically organized with all relevant rules, analysis, and conclusion on each issue in its own single section.

Sam didn't struggle with Mel, Bill did. Sam also didn't try to defend himself.

You should have expanded greatly on the foreseeability issue – was it foreseeable that Mel would change his mind, that Bill would come downstairs, and, most importantly, that Mel would accidentally be killed by falling on his own knife? There's a lot to discuss here, but you haven't.

DOE – FACT APPLICATION ANALYSIS

Sam mistakenly believed that he was incurably ill and would soon die a painful death. Sam decided to end his own life but in order not to deprive his family of the proceeds of his life insurance (which were not payable in case of suicide) Sam asked Mel, an ex-convict, to kill him (Sam) and make it look like a robbery. Sam said that he would pay Mel \$1,000 by leaving the money in his pocket for Mel to take after Mel perpetrated the killing. Mel agreed to the plan, and Sam told Mel to come to his house that evening.

Mel arrived at the appointed time. After being ushered into the living room by Sam, Mel pulled a knife and announced that he had changed his mind and was not going to go through with the plan, but that he had come to steal Sam's family jewels. Sam replied that Mel would have to kill him to get the jewels. Sam began to advance on Mel saying, "Go ahead, kill me; that's the plan." Mel backed away uncertainly saying, "I don't want to kill you." A second later Sam's seventeen-year-old son, Bill, entered the room, saw Mel with a knife in his hand and lunged at Mel. In the ensuing struggle, Mel was killed when he accidentally fell on the knife.

Discuss the criminal liability of Sam for Mel's death.

While you have used *almost* all the facts, the way that most of them have been used has been as "bare facts," not as part of an analysis of how the law applies to them or what issues arise due to them.

DOE – SENTENCE CATEGORY ANALYSIS

Discuss Sam's criminal liability for Mel's death

Conspiracy

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DOE – SENTENCE CATEGORY ANALYSIS

believe he has abandoned the conspiracy and renounced the crime of conspiracy.

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Robbery

Robbery is the taking of another's property by force or fear with intent to permanently deprive the owners thereof. Here, Mel announced to Sam that he came to steal Sam's family jewels, after pulling out a knife in Sam's living room. Sam however wanted to stick with the plan and began to advance on Mel saying "Go ahead, kill me; that's the plan." Mel insisted that he didn't want to kill Sam and backed away uncertainly. Even though Mel had tried to back away from the plan to kill Sam, Sam was not about to allow Mel to abandon their plan. Renunciation of the agreement to commit the crime may not be successful as it came too late. Mel perhaps should not have shown up at Sam's if he decided he didn't want to kill Sam after all.

Foreseeable Acts Arising Out of Conspiracy

Co-conspirators to a crime are liable not only for the target crime of the conspiracy, but for all foreseeable crimes or acts arising out of the conspiracy. Here, Sam and Mel agreed to the killing of Sam for insurance money. Were the acts that arose out of the agreement foreseeable such that Sam and Mel would anticipate they would occur as a consequence of their agreement?

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The intent to kill that both Sam and Mel had as part of their conspiracy agreement to have Sam killed so Sam's family may collect life insurance benefits after Sam's death may be transferred to the death of Mel. If an actor has the intent to commit one crime against one person, and in the process the crime is committed against another person instead, the doctrine of transferred intent may be used to hold the actor liable for the second crime.

Here, in the ensuing struggle after Sam's son lunged at Mel who had a knife in his hand, Mel was killed when he accidentally fell on the knife. Sam may be held liable for Mel's

DOE – SENTENCE CATEGORY ANALYSIS

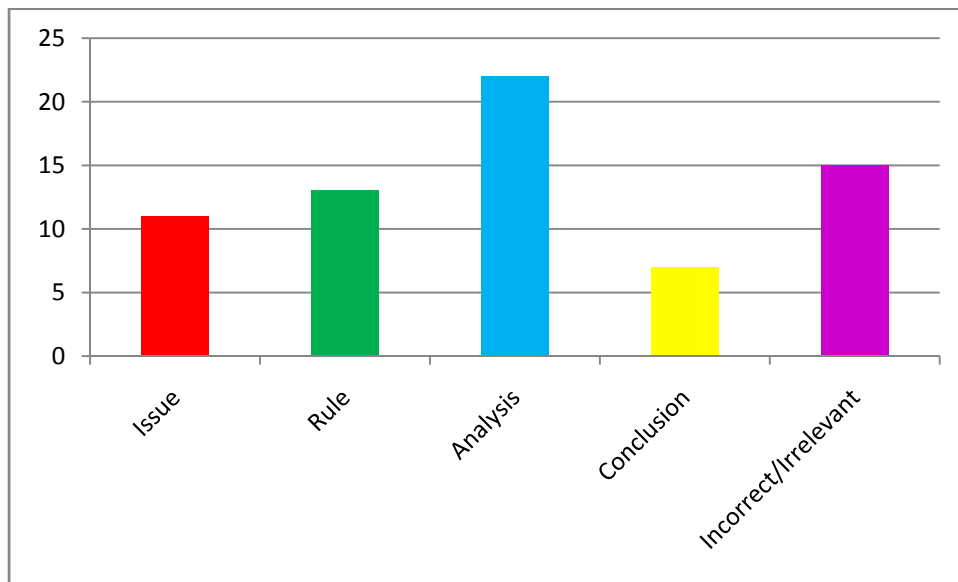
death as the intent to kill Sam was transferred to Mel.

Criminal Liability of Sam

In a conspiracy, the co-conspirators are liable for all acts foreseeably arising from the commission of the conspiracy. If the conspiracy between Sam and Mel to kill Sam was not renounced or abandoned by Mel who changed his mind about killing Sam, then any acts foreseeably arising from the conspiracy is attributed to co-conspirators, including the death of one party. Sam is liable for Mel's death because were it not for their agreement to kill Sam, Mel's accidental death would likely not have occurred. Mel's death is a foreseeable consequence of the conspiracy. However, Sam may still use the defense that he was faced with deadly force and defended himself by struggling with Mel for the knife, and as a result, Mel was killed.

DOE'S ANSWER

| | | | | | |
|---------|-------------------|--------------------|-----------------------|---------------------------|-------------------------|
| Key: | Issue(Red) | Rule(Green) | Analysis(Blue) | Conclusion(Yellow) | Irrelevant(Pink) |
| Totals: | 11 | 13 | 22 | 7 | 15 |



Doe: 1,270 words = 36 wpm @ 35 minutes

The Incorrect/Irrelevant sentences in your essay are going to be fatal to your score.

BRIAN'S ESSAY ANSWER

State v. Sam

Murder

At common law, murder is an unlawful killing of another human being with malice aforethought. The malice element may be established through an intent to kill, intent to commit grievous bodily harm, willful and wanton disregard for the value of human life (“depraved heart murder”), or if the death occurs during the commission of an inherently dangerous felony (“felony murder”). However, first causation must be established.

Actual Cause

Actual cause is established by showing that but for the defendant’s actions, the death would not have occurred. Here, had Sam not solicited Mel to kill him, Mel would not have shown up at the appointed time with a knife. However, since Mel had decided to commit an actual robbery of Sam’s family jewels, Sam’s solicitation may have been irrelevant. Consequently, it is unclear whether Sam’s actions were the actual cause of Mel’s death.

Proximate Cause

Proximate, or legal, cause is established by showing that the death resulted from an unbroken chain of events leading back to the defendant’s actions. Any unforeseeable supervening, intervening event will serve to sever this chain of causation and will relieve the defendant of liability. Here, although Sam solicited Mel to stage a robbery and murder Sam by bringing a knife to his house at the appointed time and stabbing him, Mel changed his mind and decided not to kill Sam. Even when Sam said, “Go ahead, kill me; that’s the plan,” Mel refused by saying, “I don’t want to kill you.” The question of whether Mel’s change of mind constitutes a supervening, intervening event revolves around whether or not Mel’s change of mind was foreseeable. Given the circumstances, it is probably foreseeable that a person who is asked to stab someone else to death for money, thereby becoming liable for murder, may change his mind. Therefore, it is likely that Sam’s solicitation of Mel was the proximate cause of Mel’s death.

Intent to Kill

Intent-to-kill murder requires that the defendant have premeditated and deliberated about the killing prior to carrying it out. Here, although Sam premeditated and deliberated prior to the killing, he did so regarding his own death, not the death of Mel. Therefore, Sam did not possess the required mental state to be liable for intent-to-kill murder.

Intent to Inflict Serious Bodily Injury

A defendant may also be found to have possessed the required mental state to sustain a murder charge if they intended to inflict serious bodily injury on the victim. Here, the facts do not indicate that Sam intended to inflict any injury at all on Mel. Therefore, Sam cannot be held liable under this theory.

Depraved Heart Murder

A defendant who acts with willful and wanton disregard for the value of human life may be liable for deaths that occur due to his actions. Here, Sam had solicited Mel to kill him because Sam mistakenly thought that he had an incurable disease and would soon die a painful death. Consequently, Mel decided to end his own life but urged Mel, an ex-convict, to kill him for

BRIAN'S ESSAY ANSWER

\$1,000 so that his family would still collect on Sam's life insurance policy. The prosecution may argue that because Sam sought to end his own life, he showed willful and wanton disregard for the value of human life. However, because Sam believed that he was incurably ill and had sought to have himself killed mainly to avoid his own suffering, Sam probably lacked the indifference to the value of human life required to be held liable under this theory.

Felony Murder

A death that occurs during the commission of an inherently dangerous felony may also satisfy the intent element to sustain a murder charge. At common law, the inherently dangerous felonies were burglary, arson, rape, robbery, and kidnapping. Here, Sam and Mel agreed to stage a robbery during which Mel would kill Sam. Although robbery is an inherently dangerous crime, the facts indicate that the robbery was staged and therefore would not be an actual crime. However, both Sam and Mel had conspired to commit fraud against Sam's life insurance company as well as to commit the murder of Sam. Since fraud is not an inherently dangerous felony, it cannot serve as an independent underlying felony for purposes of establishing felony murder. However, the attempted murder of Sam is an inherently dangerous felony and may be used to establish felony murder. The problem here is that one co-felon is only liable for the death of another co-felon under felony murder if there was a gun battle, and here there wasn't. Therefore, Sam will not be liable under a felony murder theory.

Conspiracy

Co-conspirators are liable for any crimes committed by co-conspirators in furtherance of the target crime of the conspiracy. In order to establish a conspiracy, there must be an agreement between parties to commit a target crime, at least one more co-conspirator than is necessary to carry out the target crime (the Wharton rule), and an overt act in furtherance of the target crime. Here, Sam and Mel agreed to stage a robbery during which Mel would stab Sam. The purpose was to have Sam die so that he would not experience a painful death due to the incurable illness that Sam thought he had, but also to perpetrate fraud against Sam's insurance company. Both constitute crimes and will serve to establish the agreement element of conspiracy. When Mel came over to Sam's house at the appointed time, he committed an overt act in furtherance of the conspiracy even though he had changed his mind about his intent and had decided only to rob Sam's family jewels. Thus, Sam and Mel were in a conspiracy and either may be held liable for any crimes committed in furtherance of the target crime.

Here, however, Mel's decision to not kill Sam but instead rob Sam of his family jewels was not a crime in furtherance of either the target crime of murder nor insurance fraud. Therefore, Sam cannot be held liable for Mel's actions under a conspiracy theory.

Voluntary Manslaughter

A murder charge may be reduced to voluntary manslaughter if the killing was done in the "heat of passion." This requires that the defendant have been adequately provoked in a way that would have caused a reasonable person to lose control, the defendant was actually provoked, there was insufficient time for the defendant to cool off, and the defendant did not actually cool off. Here, there is no evidence that Sam killed Mel as a result of being provoked, since the facts indicate that Mel was killed when he accidentally fell on the knife after having been lunged at by Sam's

BRIAN'S ESSAY ANSWER

seventeen year old son Bill who probably thought, correctly, that Mel was in the house to commit a crime. Therefore, Sam will probably not be liable for voluntary manslaughter.

Involuntary Manslaughter

A conviction for involuntary manslaughter may be obtained through the misdemeanor manslaughter rule, under which a defendant may be convicted if their actions were the proximate cause of the death and the defendant was engaged in a non-dangerous felony or a *malum in se* misdemeanor and the death was a foreseeable result of the commission of the misdemeanor. Involuntary manslaughter also applies in cases where a defendant's criminal negligence leads to a death.

Here, even if we ignore the attempted murder that was originally planned, Sam was engaged in attempted insurance fraud, which is a non-dangerous felony. In addition, Sam's actions manifested a reckless disregard for the dangers that the proposed situation would lead to, especially given the fact that Sam's seventeen year old son Bill was in the house. If Sam's actions rise to the level of at least criminal negligence, or if Sam is held to have been engaged in a non-dangerous felony at the time that Mel was killed and the death was foreseeable, Sam may be found liable for involuntary manslaughter.

Here, especially since Sam's son was in the house, it was probably foreseeable that somebody other than Sam might be hurt during the planned encounter. In addition, Sam's actions of soliciting an ex-convict to stage a robbery and come to Sam's house to stab him to death may be used to establish a mental state of at least criminal negligence if a reasonable person would have foreseen the danger to the well-being of others. Here, that is likely to be the case. Therefore, Sam may be held liable for involuntary manslaughter.

CRITIQUE SUMMARY

Strengths

- You used all the facts.
- Most of your rule statements were correct.
- You spotted the possible implications of the conspiracy.

Weaknesses

- Your essay did not address the types of murder, nor even mention voluntary and involuntary manslaughter.
- You talked about defenses before talking about the actual crimes.
- You did not discuss causation at all.
- You included a discussion of robbery, even though it couldn't possibly be a charge that follows the call of the question.
- Several of your rule statements were incorrect.
- You discussed conspiracy in several different sections of your essay, and repeated your discussion of it.
- The essay lacked a logical framework.
- You used bare facts in a number of places and were conclusory in others.
- You summarized your conclusion at the very top of your essay.

Recommendations

- Read through my answer paying attention to its structure and what issues I spotted and addressed.
- Whenever there's a dead body, there are four things that you must always consider: murder (and possibly its degrees) including all four ways of finding it, voluntary manslaughter, involuntary manslaughter, and no crime.
- Review the concept of transferred intent.
- Adhere to the logical framework suggested in the Essay Framework. Go through an element-by-element analysis, making sure to apply the law to the facts.
- Do not use bare facts in your essay, and never ask a question.
- Be sure to always reach a conclusion on each issue.

CRITIQUE SUMMARY

Probable Score

I believe you would have received a **50 or 55** on this essay, due to not having discussed any of the four types of murder, causation, voluntary manslaughter, nor involuntary manslaughter; having talked about irrelevant issues; having several incorrect rule statements; having discussed conspiracy several times instead of just once; having introduced a charge that didn't follow the call of the question; and having not identified the source of Sam's possible liability.