CHAPTER 1: SUMMARY OF ISSUES; SUBSTANTIVE LAW

A. Summary of Issues

1. Homicide
   - Common law
     - Intent to kill
     - Intent to inflict great bodily injury
     - Reckless indifference to unjustifiably high risk to human life
     - Felony murder: foreseeable death caused in commission of inherently dangerous felony
   - 1st degree—deliberate and premeditated
   - 2nd degree—statutorily created category & common-law murder
   - Voluntary manslaughter—adequate provocation arousing sudden/intense passion in mind of ordinary person, D actually provoked, no sufficient time for ordinary person to cool off, and D did not actually cool off
   - Involuntary manslaughter—criminal negligence or unlawful act

2. Defenses
   - Insanity—M’Naghten, Irresistible Impulse, Durham, & MPC
   - Self Defense
   - Intoxication—Voluntary and Involuntary

3. Other Crimes
   - Criminal Battery
   - Kidnapping

4. Theft crimes
   - Larceny
   - Burglary
   - Robbery
   - Receipt of stolen goods
5. Party liability
   - Accomplice liability
   - Accessory after the fact

6. Inchoate Crimes
   - Conspiracy
   - Attempt

B. Homicide

**Exam Tip 1:** There are two types of homicide questions. One will ask you to discuss if the defendant can be convicted of murder or of any lesser-included offense. The other type of question will specifically ask you to discuss first degree, second degree murder, and (sometimes) voluntary manslaughter.

**Exam Tip 2:** Important: For both types of questions, you should discuss the following issues in this order: Common Law Murder, First Degree Murder, Second Degree Murder, Voluntary Manslaughter, and Involuntary Manslaughter.

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**Common-Law Murder**

At common law, murder is the unlawful killing of a human being committed with malice aforethought. Malice aforethought will be found if the killing is committed with any of the following mental states:

- Intent to kill
- Intent to inflict great bodily injury
- Reckless indifference to unjustifiably high risk to human life (Depraved-Heart Killing)
- Felony Murder

**Intent to Kill**

To be found guilty, D’s conduct must be the actual and proximate cause of V’s death and D must have intended to kill V.

**Exam Tip 3:** Look for ambiguous facts on the exam that will require a more in depth discussion of actual/proximate cause or intent to kill. Do not assume that the causation and intent to kill are met.

**FACTS from exam:**

**Intent to Inflict Great Bodily Injury**

To be found guilty, D must only possess the requisite intent to inflict great bodily injury upon V.
FACTS from exam:

Reckless Indifference
To be found guilty, D must demonstrate a reckless indifference to an unjustifiably high risk to human life.

FACTS from exam:

Felony Murder Rule (FMR)

**Exam Tip 4:** You should only discuss the felony murder rule if the facts present a killing that occurs during an inherently dangerous felony. A homicide by itself does not trigger the FMR; there must be a separate felony in the fact pattern.

Under the FMR, D can be found guilty for the unintended and foreseeable killing that is proximately caused by or during the commission or attempted commission of an inherently dangerous felony.

Traditionally, burglary, arson, robbery, rape and kidnapping are considered to be inherently dangerous felonies. Here, D is guilty of the underlying felony of ________________.

**Exam Tip 5:** To earn full credit, you must state the underlying felony that occurred and analyze the elements of the felony. Example: If robbery is the underlying felony, you have to state that robbery is the underlying felony and then analyze each element of robbery.

FACTS from exam:

The killing of the Victim was foreseeable because...

FACTS from exam:

In addition, V's killing was proximately caused by the [insert inherently dangerous felony] because...
FACTS from exam:

**Death of a co-felon**
Under the *Redline* doctrine, a defendant is generally not guilty of felony murder when a victim or a police officer, acting in self-defense or trying to prevent the escape of the defendant or his co-felon, kills the co-felon. Instead, the killing by the victim or the police officer is considered justifiable homicide.

**Exam Tip 6:** This issue is only triggered if a police officer or the intended victim of the felony kills a co-felon of the defendant who was participating in the crime with the defendant.

FACTS from exam:

**Point of Safety**
If the killing occurs after the commission of the felony is complete and the defendant has reached a place of safety, the FMR will not apply.

**Exam Tip 7:** Only discuss point of safety if the facts indicate that the felony has been completed and the defendant is no longer fleeing. For example, if a robbery has been completed and the defendants have successfully escaped, a killing that occurs after this point in time would not fall under the FMR, because there is no underlying felony in progress.

FACTS from exam:

**Exam Tip 8:** After discussing common law, you need to address 1st Degree, 2nd Degree, Voluntary Manslaughter, and Involuntary Manslaughter.

**First-Degree Murder**
1st degree murder is a statutorily created category of murder that is premeditated and deliberate. Oftentimes, a jurisdiction will also characterize FMR as a 1st degree offense.
Premeditated
A murder is premeditated if the defendant had enough time to reflect on the idea of, or plan the killing. The amount of time needed for premeditation may be brief, even a mere second of reflection is sufficient.

**FACTS from exam:**

Deliberate
Deliberate means the defendant made the decision to kill in a cool and dispassionate manner.

**FACTS from exam:**

Felony Murder Rule

**Exam Tip 9:** The felony murder rule analysis for Common Law is the same as the felony murder rule analysis for First-Degree Murder. You can say “see above for the felony murder analysis”.

Second-Degree Murder

**Exam Tip 10:** 2nd degree murder is the statutory version of common law murder. You do not have to repeat the analysis here. Since you already discussed common law murder above, you can say:

“Second-degree murder is the statutory version of common-law murder, including the FMR. See the common-law murder analysis above.”

**Exam Tip 11:** Although the call of the question may only ask about 1st or 2nd degree murder, you should also consider the lesser offenses of voluntary and involuntary manslaughter.

Voluntary Manslaughter
In order for D to be found guilty of the lesser offense of voluntary manslaughter, there are four elements.

There must be a provocation that would arouse a sudden/intense passion in the mind of an ordinary (reasonable) person.
FACTS from exam:

Defendant must have actually been provoked

FACTS from exam:

There must not have been sufficient time for an ordinary (reasonable) person to cool off

FACTS from exam:

D did not actually cool off

FACTS from exam:

Involuntary Manslaughter
To be found guilty of involuntary manslaughter, D must have been criminally negligent.

FACTS from exam:

Defenses (Only discuss the defenses that apply)

Insanity

Exam Tip 12: The four insanity rules are not the same, so you your analysis of each rule will be slightly different, depending on the elements of the rules.

M’Naghten Rule
Under the M’Naghten rule, the defendant is not guilty if, because of a defect of reason due to a mental disease, the defendant did not know either (i) the nature and quality of the act or (ii) the wrongfulness of the act.
**Irresistible Impulse Test**
Under the irresistible impulse test, the defendant is not guilty if he lacked the capacity for self-control and free choice because mental disease or defect prevented him from being able to conform his conduct to the law.

**Durham Rule**
Under the Durham rule, a defendant is not guilty if the unlawful act was the product of the defendant’s mental disease or defect and would not have been committed but for the disease or defect.

**Model Penal Code Test**
The Model Penal Code combines the M’Naghten and irresistible impulse tests. The defendant is not guilty if, at the time of the conduct, he, as a result of a mental disease or defect, did not have substantial capacity to appreciate the wrongfulness of the act or to conform his conduct to the law.

**Intoxication**
There are two states of intoxication, voluntary and involuntary.

Voluntary intoxication involves the voluntary ingestion of an intoxicating substance. It is a defense to most specific intent crimes if the defendant did not have the state of mind to form intent due to intoxication, but it is not a defense to murder.

Involuntary intoxication is the involuntary ingestion of an intoxicating substance, such as with duress, without knowing of its nature, prescribed by a medical professional, etc. It is a defense to murder.
Self-defense
Self-defense is the use of reasonable force to protect oneself at a reasonable time. Deadly force may only be used to protect against the use of deadly force.

Unreasonable self-defense is a defense available to one who engages in good faith but unreasonable self-defense. It is a mitigating defense which takes a murder charge down to voluntary manslaughter.

Other Crimes

Criminal Battery
Criminal battery is the intentional unlawful application of force to another person. Battery is a general intent crime, so intent will be found through intentional conduct and/or criminal negligence (conduct that carries a high risk of harming others).

Kidnapping
Kidnapping is the unlawful confinement of a person against that person’s will coupled with either movement or concealment of that person.

Theft Crimes

Exam Tip 13: The exam facts can be relevant for more than one type of theft crime; be sure to discuss all relevant theft crimes.

Burglary
Burglary is the breaking and entering of the dwelling of another at nighttime with the specific intent to commit a felony therein.

Exam Tip 14: Be sure to address all elements of burglary, including a clear statement of which felony the defendant is intending to commit “therein”.

Exam Tip 15: Remember that the common-law rule for burglary requires that the building be a dwelling, and that the breaking crime occurs at night. You can mention both the common-law rule and modern rule for dwelling and “at night”.

Larceny
Larceny is the trespassory taking and carrying away of the personal property of another, without his consent, with the specific intent to permanently deprive the owner of the property at the time of the taking.
Exam Tip 16: Focus on the elements of lack of consent, and the intent to permanently deprive at the time of the taking. The taking and carrying away elements can be met by the slightest movement.

Robbery
Robbery is a larceny by force or intimidation when the taking of property is from the victim or in his presence.

Exam Tip 17: If you have already discussed Larceny, you can say “see above for larceny” discussion and then focus on the force/intimidation and from the victim/in his presence elements.

Receipt of Stolen Property
Receipt of stolen property requires receipt or control of stolen property, with the knowledge that the property was wrongfully taken, with the intent to permanently deprive the owner of the property.

Exam Tip 18: Knowledge can be express or implied under the circumstances and includes circumstances where the defendant is "willfully blind" to the fact that the property has been stolen.

Party liability
Accomplice Liability
A person is liable as an accomplice if he aids or abets a principal prior to or during the crime with the intent for a crime to be committed.

Exam Tip 19: Be sure to clearly explain what the accomplice did to aid/abet the principal and why the accomplice had intent for the crime to be committed.

FACTS from exam:

The accomplice is liable for the crime itself and all other foreseeable crimes that might occur.

Exam Tip 20: Be sure to discuss whether each crime that occurs is foreseeable. An accomplice is only liable for crimes that are foreseeable. If an unforeseeable crime occurs, she will not be liable under an accomplice liability theory.

FACTS from exam:
Accessory After the Fact
An accessory after the fact is one who aids a felon to avoid apprehension after the felony is committed, and to be guilty the person must know the felony was committed.

Inchoate Crimes
Conspiracy
Conspiracy is an agreement between two or more people to accomplish an unlawful purpose plus specific intent to agree and commit the criminal objective. There must also be an overt act in furtherance of the conspiracy.

Exam Tip 21: There is no doctrine of merger applied to conspiracy. A defendant can be convicted of conspiracy to commit a crime and the underlying crime itself (as well as any crimes committed in furtherance of the conspiracy). For example, a defendant can be liable for conspiracy to commit robbery and robbery itself (and any other crimes in furtherance of the conspiracy).

FACTS from exam:

A conspirator is liable for the conspiracy and a co-conspirator’s substantive crimes in furtherance of the conspiracy.

Exam Tip 22: Be sure to discuss whether each crime that occurs is in furtherance of the conspiracy. If a crime is committed that is not in furtherance of the conspiracy, the defendant will not be liable under a co-conspirator theory.

FACTS from exam:

Attempt
Attempt requires the specific intent to achieve the criminal act and a substantial step (mere preparation to commit the crime is not enough) in the direction of the commission of the act or dangerously close to the commission of the act.

Exam Tip 23: The crime of attempt is subject to the doctrine of merger, so if the defendant successfully commits the underlying crime, the attempt merges into the completed crime, and the defendant is only liable for the completed crime. She is not liable for attempt and the completed crime.
Criminal Law Exam Question
July 2011, Question #1

Vicky operates a successful retail computer sales business out of the garage of her house. Vicky told Dan that she intended to go on vacation some days later. Dan subsequently informed Eric of Vicky’s intended vacation and of his plan to take all of her computers while she was away. Eric told Dan that he wanted nothing to do with taking the computers, but that Dan could borrow his pickup truck if Dan needed it to carry the computers away.

While Vicky was scheduled to be away on vacation, Dan borrowed Eric’s pickup truck. Late that night, Dan drove the truck over to Vicky’s house. When he arrived, he went into the garage by pushing a partially open side door all the way open. Vicky, who had returned home early from her vacation, was awakened by noise in her garage, opened the door connecting the garage to the house, and stepped into the garage. When she saw Dan loading computers into the back of the truck, she stepped between Dan and the truck and yelled, “Stop, thief!”

Dan pushed Vicky out of the way, ran to the truck, and drove off. He immediately went to Fred’s house where he told Fred what had happened. In exchange for two of the computers, Fred allowed Dan to hide the truck behind Fred’s house.

What crimes, if any, have Dan, Eric, and/or Fred committed? Discuss.

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ISSUES CHECKLIST

I. D’S CRIMES

Burglary

Breaking

Entering

Dwelling of Another

At Nighttime

Intent to Commit a Felony

Larceny

Trespassory

Taking

And Carrying Away

Personal Property of Another

With Intent to Permanently Deprive

Robbery

Person or Presence

Force or Intimidation

Battery

Conspiracy

II. E’S CRIMES

Conspiracy

Accomplice Liability

Burglary and Larceny

Robbery

Battery

III. F’S CRIMES

Accessory After the Fact

Receiving Stolen Property
I. DAN’S (D) CRIMES

Burglary

Burglary is the breaking and entering of the dwelling of another at nighttime with the specific intent to commit a felony therein.

Breaking

Breaking is accomplished by using force to create an opening into a dwelling, such as by shattering a window or kicking in a door. Here, pushing a partially open side door all the way open constitutes a breaking because a breaking may be slight.

Entering

Entering occurs when any portion of the defendant’s body or an instrument used by the defendant to gain entry crosses into the dwelling without permission through the opening created by the breaking. In this case, D entered Vicky’s (V) property when he went into the garage.

Dwelling of Another

A dwelling is a structure regularly occupied for habitation. It need not be occupied at the time of the breaking, but it must not be abandoned. All states have statutes that expand the type of structure to include non-dwellings, such as businesses, buildings, or cars, and surrounding areas, such as yards.

Here, D broke into the garage of V’s house. V did not sleep in her garage, but she did conduct her computer business out of her garage and frequently spent time in there. Additionally, the garage was connected to the house by the door that V entered when she heard the noise. Thus, the garage is part of V’s dwelling house, and this element is met under the common law definition of burglary. [Note the discussion of the modern rule] The element is also met under a modern statutory definition because a garage would be considered a structure in its own right.

At Nighttime

Nighttime occurs during the period of darkness between sunset and sunrise. The common law required that the breaking and entering occur during nighttime. [Note the discussion of the modern rule] Modernly, no states require that all forms of burglary be committed at night, although more severe penalties may be imposed on nighttime burglaries. In this case, D entered V’s garage late at night, which easily qualifies as the period of darkness between sunset and sunrise, so this requirement is met even though it is unnecessary today.

Intent to Commit a Felony

At the time of the breaking and entering, the defendant must have the intent to commit a felony inside the dwelling. In this case, D had the intent to commit larceny of V’s computers when he entered her garage, as will be explained below. Evidence of this intent is shown by D informing Eric (E) that he planned to take all of V’s computers while she was away on vacation. Further, D borrowed E’s pickup on the night of the burglary in order to carry the computers away once he had taken them. Thus, D had the intent to commit a felony within V’s garage.

Since all of the above elements are satisfied, D committed burglary.
Larceny

[Addressing each element in a separate paragraph will help you avoid missed elements/sub-issues and show the graders that you know how to pair the relevant facts with each element.]

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

Trespassory

The property must be taken without the owner’s consent. In this case, we can infer that D was taking the computers without V’s consent because he drove to her house late at night and entered the garage by pushing open a side door rather than using a key. Additionally, when V saw D loading the computers into the back of the truck, she stepped between D and the truck and yelled, “Stop, thief!” indicating that he did not have her permission to take the computers. Therefore, D’s taking was trespassory.

Taking

The taking requirement is satisfied by any trespassory removal of the property from the owner’s possession into another’s control. Here, D took the computers once he removed them from V’s garage and loaded them into the back of the truck.

And Carrying Away

The carrying away requirement is satisfied by even a slight movement of the property. Here, D drove off with the computers in the truck, so this element is met.

Personal Property of Another

The property taken must be personal, not real, property and be in the possession of someone other than the defendant. This element is satisfied because D took V’s computers, which are personal property that were in V’s possession at the time D took them.

With Intent to Permanently Deprive

Larceny is a specific intent crime. Thus, the intent to permanently deprive the owner of the property must be present at the time of the taking. There are no facts in this case to indicate that D had any plan to return V’s computers to her. Both his conversation with E and his act of pushing V out of the way so he could drive away with the computers indicate intent to keep them permanently. Further, he gave Fred (F) two of those computers in exchange for the ability to hide the truck behind F’s house. Thus, D had intent to permanently deprive V of the computers.

For the reasons discussed above, D committed larceny.
Robbery

Robbery is larceny by force or intimidation when the taking of the property is from the person or presence of the victim. As explained above, D committed larceny of V's computers.

Person or Presence

The property taken must be on the victim’s person or within the victim’s reach or control (i.e., in the presence of the victim). In this case, V was present in the garage when D loaded some of her computers into the truck. In fact, she stepped between D and the truck as he was attempting to flee with the computers, which indicates that she was present when her property was taken. As such, this element is satisfied since the computers were taken from within a very close proximity to V.

Force or Intimidation

D may first claim that there was no force or intimidation because he neither threatened V nor carried a weapon with him to complete the larceny. To satisfy this requirement, however, the defendant need only use more force than the amount necessary to effectuate taking and carrying away the property.

Here, when V stepped between D and the truck, D likely could have reached the truck by going around her. Instead, D pushed V out of the way, which is more force than necessary to effectuate the taking and carrying away as he had already taken the computers into his possession and placed them into his truck.

In addition, D may argue that he did not accomplish the taking by force because he already had the computers in his possession before V confronted him. He will say that the force was only used to effectuate his escape, and not the robbery itself. However, because the robbery would not have succeeded but for the physical force to the victim, it's likely to satisfy the requirement of force.

D committed robbery.

Battery

[Battery is a straightforward issue here and the facts are not ambiguous, so a single paragraph of analysis is appropriate here.]

Battery is the unlawful application of force to another person that causes bodily harm to that person or constitutes an offensive touching. Here, D physically shoved V out of the way as he was escaping. Although the facts do not indicate that V was harmed, the touch was offensive because D was an intruder in V’s home, as opposed to an invited guest, and she was trying to stop him from committing a crime against her.

Therefore, D committed battery.

Conspiracy

Conspiracy is an agreement between two or more people to accomplish an unlawful purpose with the intent to accomplish that purpose. There must also be a legal or illegal overt act in furtherance of the conspiracy.

The prosecution may attempt to argue that D conspired with E to commit burglary since he discussed his plans with E in advance and E loaned him his truck for the purpose of taking the computers from V. However, as will be addressed below, it is not clear that E had the specific intent for the burglary to be
completed. If E lacked the requisite intent to accomplish the burglary, then D can only be convicted of conspiracy in a jurisdiction that recognizes unilateral conspiracy.

II. E’S CRIMES

Conspiracy

See rule above. The issues are whether E had the intent to enter into an agreement with D to accomplish an unlawful purpose and if E intended for the illegal object to transpire as planned. Here, the facts suggest that E lacked that intent, so he is likely not guilty of conspiracy.

The prosecution will argue that E's decision to loan his truck to D knowing that D intended to use it to burglarize V’s business is evidence that E conspired to commit that crime. However, E specifically told D that he wanted nothing to do with taking the computers [Counter-argument.]. Although the prudence of nonetheless letting D use his truck to commit the robbery is questionable, the facts do not prove that E intended to participate in the burglary or that he shared D's goal for the burglary to succeed. He may have been indifferent to the theft being committed or even favorable to the idea, but this is not persuasive evidence that he intended for D to succeed in the burglary. Since the prosecution will have the burden to show intent beyond a reasonable doubt, this is unlikely to be a persuasive argument.

Therefore, it's likely that neither D nor E could be convicted of conspiracy.

Accomplice Liability

[Note the difference between Conspiracy and Accomplice Liability: Conspiracy is a separate crime in itself that required the agreement between two or more people to commit a crime. Accomplice Liability is found if a person aids or abets another person (no agreement between the two people is required, only aiding/abetting is required) with the intent for a crime to be committed.

A principal is the person whose acts or omissions are the actus reus of the crime, in other words, the perpetrator of the crime. A person is liable as an accomplice if he aids or abets a principal prior to or during the crime with the intent for a crime to be committed. The accomplice is liable for the crime itself and all natural and probable consequences of the crime.

Burglary and Larceny

In the case at hand, D was the principal because he was the one who actually perpetrated the crimes listed above. E aided D prior to D committing the crimes because he allowed D to borrow his pickup so that D could carry the computers away. Although E may argue that he did not have the requisite intent for any crimes to be committed and point to the fact that he said he wanted nothing to do with taking the computers, his actions contradict such a conclusion because he loaned D his truck for the express purpose of completing the crime. Further, without E’s participation in loaning D his truck, it's not clear that D would have been able to commit the crimes. Therefore, if it was foreseeable that D would commit burglary and larceny, E is liable.

In this case, E knew that D intended to enter V’s business and take her computers. This means he was personally informed of D’s intent to commit larceny and burglary. In fact, he specifically told D that he could use his truck if D needed it to carry the computers away. Therefore, E is liable as an accomplice to burglary and larceny.
**Robbery**

E will argue he is not an accomplice to the robbery of V because it was unforeseeable [Note that an accomplice is only liable for crimes that are natural/probable consequences of the crime that they intend to aid/abet] that V would be home and therefore that D would take anything from her person or presence. He will claim that he thought V was on vacation, and that the most he could be guilty of is burglary and larceny.

On balance, this argument is likely to fail. E had no personal knowledge of V’s travel plans, and by agreeing to lend D his truck for the purposes of escaping with V’s computers, he assumed the risk that D might have erred in determining V’s travel plans. Further, because the business was in V’s garage, it would be foreseeable that someone might be either on V’s property for business purposes, such as a house sitter or someone else besides V that was living there. As such, the presence of another person was reasonably foreseeable, and so was the robbery of the computers from that person’s presence.

E is therefore guilty of robbery as an accomplice.

**Battery**

Similarly, E will argue that it was not reasonably foreseeable that D would commit battery against V because he didn’t know that V would be present. For the reasons discussed above, this argument will likely fail. A home invasion always carries with it inherent risks that someone will be present. Breaking into a business carries the same risks because, while people are normally at home at night sleeping, businesses often hire security personnel to guard the premises at night. It was foreseeable that V or another person might be there during the burglary, and that D might use force against them in order to effectuate his escape.

As such, E is guilty as an accomplice to battery.

**III. F’S CRIMES**

**Accessory After the Fact**

An accessory after the fact is one who aids or assists a felon in avoiding apprehension or conviction after the felony is committed. To be guilty the person must know the felony was committed.

In this case, F knew that the computers had been stolen earlier that evening because D drove to F’s house immediately after leaving V’s house and told F what had transpired. Nonetheless, in exchange for two of the computers, F agreed to let D hide his truck on his property. This action aided D in covering up the crime and aiding detection. Hiding the getaway vehicle that V had seen D driving away increased the chances that D would get away with the theft of her property, and therefore F acted as an accessory after the fact.
Receiving Stolen Property

Receiving stolen property is a statutory crime that requires receiving control of stolen property with knowledge that the property is stolen and with the intent to permanently deprive the owner of the property.

D specifically informed F that the computers were stolen, but F agreed to take two of them in exchange for hiding D’s truck. The knowledge requirement is met here because F had firsthand knowledge of the computers' stolen status but agreed to take them into his possession. Further, there are no facts to indicate that F planned to return the computers to V.

F has received stolen property.

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