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Exam Name: CrimLaw_LSN_(Chang)_Final_F08

Instructor: Helen Y. Chang

Grade: _____

1)

There is a constitutional backdrop to every criminal case, that is there are certain constitutional limitations that must be adhered. For instance, the principle of legality states that for conduct to be criminal it must violate an existing statute when committed. In addition, the legislature is barred from passing any ex post facto laws, which means that they can not criminalize an individual for prior conduct. Furthermore, due process requires that the state/prosecution prove all elements of an offense beyond a reasonable doubt, and where applicable show a concurrence of both the mens rea and actus reus of an offense, and proximate cause between D's act and the resulting harm. Conversely the burden of proof re affirmative defenses is on the D to show by a preponderance of the evidence (unless state law makes it clear and convincing like in federal court). Lastly, there are constitutional limitations that are at play i.e. the 8th amdt bars cruel and unusual punishment and all punishment must comport with society's standards, serve a purpose i.e. deterrence and be proportional to the crime - and not be dished out in a capricious or arbitrary way (like the McKlempsy case showed unfortunately to no avail).

CRIMES:

SOLICITATION (Drew- D encourages Eva - E to commit kidnapping)

Solicitation occurs when one encourages/asks/hires another to commit a crime, and when said person intends for the other to commit that crime. The D must actually intend for the person solicited to commit the target crime- so if D is joking - no solicitation. Here, D encourages E to commit kidnapping, although E believes its a part of their ongoing youtube simulations- D actually does intend for E to commit real kidnapping so solicitation occurs. However, if the target crime is achieved then solicitation charge will merge with the other- even if the target crime is not achieved- solicitation will still merge i.e. if attempted kidnapping occurs then solicitation charge will merge with the attempted crime. Thus here, the solicitation charge for D will actually merge with the conspiracy charge - as there is a conspiracy formed between D and E.

CONSPIRACY (E tacitly agrees)

D and E are in agreement to commit a crime so there is potentially conspiracy here. Conspiracy occurs when there is an agreement between 2 or more ppl to commit a crime or a lawful act in an unlawful way. There must be agreement but it does not have

to be an express verbal agreement - tacit agreement will do ie a head nod or by conduct (even knowledge may be enough if coupled with stake in the venture, or if the crime is a felony, or there is a disproportionate volume of business for illegal purpose, etc). In addition, at CL bilateral agreement was required - meeting of the minds- but modernly unilateral agreement will suffice (this provides for undercover cops). Furthermore, there must be intent that the objective of the conspiracy be achieved and in a maj or jx there must be an overt act in furtherance/realted to the conspiracy - but this does not have to be anything illeegal and can be as simple as a phone call. Here, D falsely tells E that G agrees to be kidnapped for youtube- at CL there would be no agreement be/c not bilateral BUT modernly it is enough that there is unilateral agmt- furthermore D does intend to commit the actual objective of the conspiracy - to kidnap G and there is an overt act here as well = they go to G's house and even enter it - again overt act does not have to be anything illegal. Thus the conspiracy is born- under the Pinkerton doctrine (MAJ) all members of conspiracy are liable for the others' criminal acts as long as those acts are a foreseeable consequence of the conspiracy, thus E will be liable for all crimes D commits if they fit the rule- are foreseebble consequence of the conspiracy to commit kidnapping and of course the same applies to D re E's criminal acts. Only when the conspircy is terminated- when the objective is achieved does this liability cease- as such conspiratorial libtly is rather broad- as a member does not even have to be present when another commits a criminal act to be liable for it.

ACCOMPLICE LIABILITY (Re E)

E may also be liable under accomplice liability which is not an actual crime but rather a theory of derivative liability based off the principal's conduct. For one to be liable under this theory they must intend to assist/aid/abet/encourage, etc the principal in commisssion of target crime and must intend that the target crime be committed. In MIN of jx a higher mental state is required which means that acc must intend the particular result, however in MAJ of jx - only have to have the req mens rea in the definition of the substantive offense. In addition, once actual assistance is found - the degree of assistance / or even whether the assistance was not really needed is irrelevant. Aassistnace can be physical conduct, or psychological support or even an ommission to act where there is a legal duty to do so (ie relationship, statute, creation of the risk, etc). Here, E does intend to assit D- albeit her assistance is due to her belief that this is all a simulation but nevertheless she intends to assist D and she actually is assisting both by psychological support in her behavior and not just mere presence and in her physical conduct once at the house- - shooting at T, etc. There may be a problem here though depending on what jx E is in- if in a min of jx she may not be liable as an acc be/c its arguable whether she actually inteds to bring about the particular result at hand here = the kidnapping of G. However if in a maj of jx- E only needs to satisfy the mens rea in the offense which may very well be negligently/recklessly etc. Here the statute 500 states kidnapping when person abducts ir steals away antoher w/out lawful authority or warrant and holds person against will- thus there doesnt seem to be any particular requirement of acting purposely - so E could be liable as acc if in maj of jx. If she is an acc then she will be liable for all other crimes committed by D- as long as they are a natural and probable consequence of the commission of the target crime - kidnapping. (Thus B will be liable for the attempted murder charge below from E's shooting T- if its a natural and probable consequence of the commission of kidnapping- which it arguable is- there is a risk in threat to human life when target crime = kidnapping).

BURGLARY (door is ajar)

At CL burglary was the breaking and entering into the dwelling of another at night with the intent to commit a felony or larceny therein. As such its a specific intent crime and an inchoate crime at that - be/c the actual felony, etc does not have to be committed - just need concurrence of the act and the specific intent for liability. AT CL - restricted to dwelling of another and at night- modernly there are some variations to this, also there had to be some physical movement to constitute breaking- ie even if door unlocked, could still count if person opened it turned the door knob. Thus here, D and E enter G's house but the door is wide open - so they dont even touch or move anything- at CL this would be a problem- there would not be a burglarly leaving door open like this would almost be seen as an invitation. Thus D and E at CL would not be liable of burglary due to this technicality- if they had to touch door at all then probably diff result be/c D did have intent to commit kidnapping and E liable as co-conspirator at least and so would be liable for the burglary too if it was a foreseeable consequenc of the conspiracy to commit kidnapping which it arguably is.

RAPE (RE Giselle- G, fraud in factum v fraud in inducement, re Tim- T)

Rape at CL was the carnal knowledge of a woman by a man with force and without her consent. Modernly statutes are gender neutral and the physical resistance requirement has been altered - be /c this puts vics in more danger. Thus rape occurs by force (In min - force req abolished) (in maj - only amount of force nec to overcome the consent of a reasonable person in vic's place), or by threat of force (threat of imminent death or gbi to vic - or in some jx to 3rd person) or where vic lacks the ability to consent (ie is asleep, mentally ill, etc) or by fraud in factum (v fraud in inducement which we all do ie i love you have sex with me). Fraud in factum occurs ie when woman consents to a gyno exam and instead is penetrated by the Dr's penis! At CL rape would occur if vic was married and thought she was having sex with her husband but it was actually husband's twin- however at CL if vic was not married and tricked into sex with boyfriend's twin then it was not rape. Modernly emmission not nec - and only slight penetration req. Here, it is not clear if T actually penetrated G- facts state G was bound and gagged and in the middle of a sex game with T- who G thought was Bob (T is B's twin brother) - if there was actual penetration involved in the game then T could be liable for rape of G.

If there was penetration by T of G - he may be able to defend with mistake of fact - depending on the jx- provided it was a reasonable and honest mistake ie T will say he honestly and reasonably believed that G consented to the sex - as she consented to the sex bondage games (in some jx if T should have known as a reasonable person that G did not consent then no defense). However fraud in factum rape will still technically have occurred- although not married - so wouldnt at CL- be/c if there was penetration G thought she was consenting to sex with T's twin B and not T.

ATTEMPTED MURDER (RE E shoots T)

An attempted crime occurs when D intends to commit a target crime and there is an overt act beyond mere preparation. Jurisdictions vary as to when this latter element occurs but there are 8 tests used to make this determination. Last Act (CL- occurs when D is only one step away from commission of crime - ie finger on the trigger about to shoot), Next to Last Act (D is one step away from the last act - ie raising the gun pointing it at vic- about to put finger on trigger), Dangerous Proximity (D is dangerously close to

commission of target crime- consider nearness of danger, greatness of harm and apprehension felt), Indispensable Element (everything is in play but there is one important element missing from the equation so there can not be commission ie victim is not where he was supposed to be), Probably Desistance (D has passed point where a normal person would have voluntarily stopped), Res Ipsa Loquitor (CA- the silent film test- looking at D's conduct as a silent film - it unequivocally shows an attempted crime), Abnormal step test (the D has taken a step toward commission that an ordinary law abiding citizen would not have taken), MPC- substantial step test (D has taken subst step toward commission that corroborates criminal intent ie lying in wait). Here, E shoots at T, bullet strikes he falls bleeding but he does not die. Under the CA - silent film test- E's conduct would equal an overt step beyond mere preparation - jury looking at the conduct E shooting gun at T would unequivocally = attempted murder, even under the LAst Act test - E has surpassed all needed for overt act- her finger was on the trigger and she fired - the bullet stuck T- overt act satisfied. However, E would have to intend to commit the target crime and here this may be arguable- she did not know the gun was loaded- she arguably did not intend to kill T - she thought it was all a rouse. Thus if the jury finds she did not intend to commit the target crime - no attempted murder be/c attempt crimes are specific intent crimes- you can not intend an unintentional crime. In addition, under conspiratorial liability D may be liable for the attempted murder of T if attempted murder is a foreseeable consequence of the conspiracy to commit kidnapping - which arguably it is.

E may want to argue legal impossibility (depending what jx she is in) to her attempted murder charge re T. Pure legal impossibility may be a defense but factual impossibility will not be a defense as this has been abolished. Pure legal impossibility occurs for example when no matter how culpable D is what he is doing does not actually violate any existing statute - thus it overlaps with the principle of legality ie D think he is committing rape by touching X's finger but this is legally impossible. However, factual impossibility occurs when say D shoots what he thinks is alive person but its really a corpse, thus here E's situation is more like a factual impossibility - she is shooting a gun - granted she thinks is loaded with blanks- but nevertheless she is shooting it at a living person and this constitutes an offense in existence in the law as it stands. Thus she will likely not be able to defend against the attempt crime charge.

ATTEMPTED KIDNAPPING

D entered G's house with the intent to kidnap here and satisfied an overt act beyond mere preparation. Specifically under the abnormal step test (above)- he entered her house, without consent - arguably a step that a normal law abiding citizen would not take - showing D moved into perpetration of the crime of kidnapping. Even under the MPC - substantial step test- again D has attained a partner- gone into G's house and with a real gun and has taken substantial steps toward commission of kidnapping to corroborate his criminal intent. Under conspiratorial liability- E will be liable for attempted kidnapping- its a foreseeable consequence of the conspiracy to commit kidnapping.

MURDER (RE G's death - causation)

T fires intentionally at D - misses but hits G instead ultimately resulting in her death. Murder at CL was the intentional killing of a human with malice aforethought

without excuse/justification/mitigation. (AT CL human = born alive, now fetained in, and death = cessation of resp fx now includes cesstn of brain activity). In any case, malice aforethought occurs either when there is intent to kill, intent to inflict GBI, depraved heart murder (CA- abandoned and malignant heart)- extreme recklessness- actor knew of substantial and unjustifiable risk and consciously disregarded it, or under FMR- death that occurs during the attempted commission, commission or fleeing commission of premeditated felony. T did fire with at least the intent to inflict GBI on another human- D just happens that bullet strikes G but the intent still there. However for criminal liability there still has to be cause be/w T's act of shooting G and the resulting harm here - her death. For cause there has to be both actual cause and proximate cause. Actual cause occurs when D's act was a but for cause- ie but for T's shooting G she would not have died. To be an actual cause is pretty easy- and in this case despite the fact that G was suffering from severe asthma attack as a result of being gagged (which T also caused anyway) T's shooting G may be a concurrent cause or at least an accelerating cause, that is but for T's shooting G she would not have died when / or when and as she did respectively. Thus actual cause is satisfied here. However for T to be liable for G's death there still has to be proximate cause- this means that there may be no superseding forces breaking the causal connection be/w T's act and G's death. Although there may be intervening forces from acts of god, the vic or third persons - these will not break the causal connection. A superseding force is one that is not reasonably foreseeable to the D at the time of his act. Here, it is unclear if G would have died anyway from the asthma attack had she not been shot - however, typically it takes more than 10 minutes to die from an asthma attack and as such T's act of shooting G probably accelerated her death (but we'd need medical testimony re this) furthermore, if G's asthma attack = intervening force then it won't break causal connection, if it supersedes then it will. Typically vic's contributory neg is not a superseding force and in this case it seems asthma attack is an act of god= but one that should have been reasonably foreseeable to T- when he shot her - that a bound and gagged vic may be suffering from breathing problems. Likely will not break the causal connection here.

ATTEMPTED RAPE (re B tries to rape Cora- C- abandonment)

Please see above elements/discussion for attempt crime. According to statute 102 B intends to commit sexual assault on a minor- C who appears to be 12 (Statute says minor = <14). B already committed another felony with respect to C- violation of statute 101- when he engaged in virtual oral sex with C, and now he intends to commit actual sexual assault on C. The overt act beyond mere preparation in this case occurs under the abnormal step test- be/c likely a normal law abiding citizen would not make it all the way to C's house- all the way to her front yard. In addition, even under the MPC substantial step test - B has taken a sub step toward commission of attempted sexual assault on a minor here - he is almost stalking C- at her home- on her yard waiting to strike. B may want to defend with abandonment which is a special defense to attempted crimes- however he would have to show that he abandoned his criminal endeavor completely and voluntarily and based on the facts given he will likely fail. For instance, it's not clear if he has completely abandoned his criminal endeavor- maybe he will come back and furthermore he only stopped be/c he saw C's mother in the yard and this frightened him this does not count for voluntary abandonment- it's the same as a criminal stopping be/c they hear police coming - not voluntary so this probably won't help him much.

FELONY MURDER RULE (FMR re B's fleeing from attempted commission of rape and -

V's death; otherwise involuntary manslaughter)

In his haste to leave be/c he saw C's mother - B drives into an electrical pole. B was attempting to commit a felony = the sexual assault of minor C and it was during the flee from this attempt that V's death occurred thus B may be liable for murder of V under the FMR. FM occurs when there is a death during the attempted commission, commission or fleeing the commission of a predicate felony. Under the independent felony/merger rule the criminal transaction that leads to the death must be distinct from the felony. In addition there are other limitations, ie some jx (CA) limit the rule to only specifically enumerated felonies - ie the big CL ones - Burglary Arson Rape Kidnapping- thus death during one of these will get 1st degree murder where death penalty is potentially on the table. Furthermore, even if not specifically enumerated - felony could still count for FMR if its inherently dangerous (two approaches to make this determination). Under the maj- case by case approach- looking at the specifics of D's case; Min & CA- abstract approach; basically asking is this a felony that inevitably results in a killing - if so then inherently dangerous and FM. Although rape is specifically enumerated in statute- sexual assault on minor may not be - so V's death may not result in 1st degree murder for B. However, may be 2nd degree murder (if in CA) if its considered inherently dangerous, unfortunately looking at sexual assault in the abstract - it probably could be committed in way that is not inherently dangerous so there probably will not be FM here for V's death.

May be involuntary manslaughter for B though re V's death. Involuntary manslaughter may occur as a result of the misdemeanor manslaughter rule (any death that occurs during the commission of misdemeanor) or as a result of criminal negligence- unintentional killing that results from doing a lawful act in an unlawful way- w/out due care or circumspection - thus B driving in haste which could mean he was speeding- not using due care- running into an electrical pole could be seen as criminal negligence (in MAj gross neg or recklessness; min- even civil neg will do). Thus B may still be criminally liable for V's death under involuntary manslaughter.

Felony re B re violation of 101- B commits virtual oral sex with Cora- minor of twelve years of age. Statute 101 states its unlawful to cause minor to engage in simulation of prohibited sexual act- and this is a felony. As written minor = anyone under 14. Furthermore the statute appears to be a general intent crime- there is no specific mens rea required - once the actus reus is complete the D is liable for his generally culpable state of mind.. thus B found C's avatar on line and caused her to engage in a simulation of a prohibited sexual act. B may want to defend by saying that oral sex is not a prohibited sexual act be/c in 102 states prohibited sexual act = penetration or D who forces minor to make penetration on himself or another and oral sex is not penetration. But this will likely not be successful be/c technically there is some penetration involved in oral sex- and this would be prohibited sex act and under 101 B is guilty of felony for online simulation of this sex act with C.

In addition, D may be liable for G's death under the FMR- be/c he was attempting the commission of a predicate felony - kidnapping of G and it was during this attempted commission that G died. Although there may be some limitations to this. There still has to be a causal connection be/w D's conduct and G's death- re time manner and place, that is D is not going to be liable for murder re every single death that occurs during the commission of his felony no matter how remote. In addition the redline rule states that if

the death is justified ie in self defense then there will be no FM, and under the agency rule D can not be guilty of FM for death that occurs by someone not his agent- or by his hand. Here it was T that caused G's death- and conversely it was her asthma attack that caused her death - thus under either the agency rule or the fact that due to time, manner and place, D will probably not be liable for G's death even though it did occur while he was attempting to kidnap her. Also under the same analysis E will not be liable for G's death either.

COMPETENCY

As a constitutional basic- D must be competent to stand trial- looking at D's state of mind at the time of trial not at the time of criminal act. Here it's stated in the facts that D began to believe that he was in fact a criminal mastermind early on- if for whatever reason this delusional belief results in D not being able to reasonably assist in his defense- communicate with attorney or understand the proceedings before him - he may be found incompetent to stand trial. This issue may be raised by his attorney, or prosecution, or even the judge- judge can then order psych exam, and if D found incompetent he can be institutionalized as long as the state shows he has the potential to one day be competent and they are working to reach this goal- if he doesn't have this potential then they have to have civil commitment proceedings and show by clear and convincing evidence that D is suffering from mental disease and that he is a danger either to himself or others. In any case, the facts are not really clear here if D really will have a competency problem- but if his delusional state has such an effect it's unconstitutional to have stand trial.

INSANITY (re D- he started to believe he was a criminal mastermind)

D may want to assert an insanity defense - if his delusional belief that he was a criminal mastermind does amount to some kind of mental illness. Insanity is an affirmative defense so D will have to show at least by a preponderance of the evidence he meets defense. There are five tests used for insanity: M'Naughten (D = insane if at time of his act he was suffering from a mental disease or defect that caused him to not know the nature/quality of his act or not understand the wrongfulness of it - based either on legal wrong or moral wrong (society's values not D's); Irresistible impulse test (adds prong for volitional crimes- D = insane if as a result of mental illness at time of act he was compelled to criminal act / disease destroyed his free will); MPC- substantial capacity test (D insane if at time of act suffered from mental defect that caused him to lack the substantial capacity to conform conduct to law or appreciate wrongfulness), Product test (D was suffering from mental illness and criminal act a product of that illness, but for defect act would not occur); Federal test (D has to show by clear and convincing evidence that he has a severe mental illness and did not know nature/quality of act - or wrongfulness of it). Thus D will only be successful in using this excuse if under say the Product test he can show at the time of the criminal acts he was suffering from some mental illness and the criminal act was a product of that illness ie as a result of D's delusions that he was a criminal mastermind - his endeavor to kidnap G etc was a product of said delusions. Or under the MPC test- D was suffering from mental illness- delusions that made him lack the substantial capacity to conform his conduct to the law - he was compelled to kidnap G, etc. or he could not appreciate the wrong of what he was doing. Under these facts, it seems D may have a hard time with an insanity defense- although he may be able to get expert testimony that satisfies one of these tests depending on what jurisdiction he is in re his delusions that he is a criminal mastermind in reality.

DIMINSHED CAPACITY (D ")

D may be able to use the excuse of dim cap (not in CA though) depending on what jx he is in - if D was sufferinf from mental defect (not amounting to insanity) at the time of his crimiminal act - may negate one of the elements in the defintion of the offense. ie due to D's delusions he lacked the ability to form the requisite mens rea required.

E may try to assert the justification of defense of others re T's death. Defense of others in a min jx- is ok when there is a special relationship be/w the D and the third person and when the alter ego rule is satisfied - which means D only justified in using the amount of force that third person would have been able to use in actuality. In maj of jx though- no special relationship is required and D justified as long as D reasonably believed the amount of force used was necessary to repel unlawful imminent attack on other- thus even if force was excessive in fact could still be justified. (IF jury decides D formed the belief negligently could be an imperfect priv to mitigate down to manslaughter). But nevertheless T doesnt die - so not really a problem for E- if T had died, she could claim that she was trying to defend D- be/c T pulled out a knife and she thought she only had blanks in the gun- so maybe thought she would scare T from using knife.

MISTAKE OF FACT

E may want to claim mistake of fact defense. Mistake of fact can be a defense to general intent crimes if it is honest and reasonable - meaning a reasonable person in D's position would have formed the same belief. But in the case of specific intent crimes it only has to be an honest belief - it can be unreasonable. Thus E may be able to use mistake of fact to defend (in so much as its more of a failure or proof defense and not really an affirmative defense - that is it will negate an element of the crime- probably the mens rea). Specifically E may use mistake of fact to defend against the kidnapping - by statute 500 it appears that kidnapping is a general intent crime taht is there is no particular mens rea specified so E will be able to use this to defend if she had an honest and reasonable belief that she was not committing kidnapping be/c she thought it was a ploy that G had agreed to. In re to the attempted murder on T- she wont have to show that her mistake of fact re gun being loaded was reasonable jsut that it was honest - which it probably was since she thought this was all for youtube and was genuinely surprised when T started bleeding demanded to know what was going on at that point. Since attempt is a specific intent crime - she will be able to negate the mens rea required with her honest mistake.

wow! happy holidays!

END OF EXAM