



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

## **Essay Questions and Selected Answers**

**June 2013**

## ESSAY QUESTIONS AND SELECTED ANSWERS

### JUNE 2013 CALIFORNIA FIRST-YEAR LAW STUDENTS' EXAMINATION

This publication contains the essay questions from the June 2013 California First Year Law Students' Examination and two selected answers for each question.

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

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

<u>Question Number</u>	<u>Subject</u>
1.	Criminal Law
2.	Torts
3.	Contracts
4.	Criminal Law

**JUNE 2013**



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

**Answer all 4 questions.**

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

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

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

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

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

## QUESTION 1

Angela and Bart are animal rights activists. Angela lived near a horse ranch owned by Chris. She told Bart that she suspected the horses were being abused because she saw people going in and out of the barn at all hours of the day and night, and suggested that they go there to investigate.

Unable to open the ranch gate, Angela and Bart climbed the fence, crossed the yard, opened the door to the barn, and stepped inside. There, they found healthy horses, but also a large amount of stolen electronic equipment.

Surprised to see intruders, Chris, who was carrying a rifle, pointed it at Angela and Bart and accidentally caused it to discharge. The bullet hit the side of the barn near Angela and Bart. The noise startled the horses. Angela and Bart fled, letting out the horses. A motorist, who was driving down the road, swerved to miss the stampeding horses, crashed into a tree, and died.

1. With what crimes, if any, can Angela reasonably be charged, and what defenses, if any, can she reasonably raise? Discuss.
2. With what crimes, if any, can Bart reasonably be charged, and what defenses, if any, can he reasonably raise? Discuss.
3. With what crimes, if any, can Chris reasonably be charged, and what defenses, if any, can he reasonably raise? Discuss.

## Answer A to Question 1

Angela's criminal liability:

I. **Conspiracy**: An agreement between two or more people to commit a crime with the intent that the crime be committed.

Here, Angela and Bart agreed to go to the barn to investigate possible horse abuse. At issue is what was the crime to be committed? Angela suspected that horses were being abused, and wanted to break into Chris' land to investigate (burglary, if there is an intent to commit a felony once inside), but it is unclear what they intended to do after entering the barn. Given that Angela & Bart are animal rights activists, it can be presumed that if they did see horses being abused, they may have taken immediate action such as taking the horses (larceny).

If it was their intent to commit a crime once inside the barn, then they would be found liable for conspiracy as the conspiracy is complete once the agreement is made; the crime does not actually have to be committed.

II. **Burglary**: At common Law, burglary is a breaking and entering at nighttime, into the dwelling house of another, with the intent to commit a felony inside.

Here, Angela and Bart did commit a breaking by opening the door to the barn and an entering by stepping inside. Although this is not a dwelling house of another -- it is a barn -- common law recognizes structures near the main house as part of the dwelling, so the barn being on the property of the ranch satisfies this element. Modernly, the law has been expanded to include any protected structure, so either way, this element will be satisfied.

This case will turn, however, on what Angela & Bart's intent was once they entered the barn. To be liable for burglary, one must have the specific intent to commit a felony. The facts are unclear as to what their intent was once they entered the barn. Angela's stated purpose was to investigate, which is not a felony. Assuming that she had no intent other than to investigate, Angela will not be found guilty of burglary.

### III. Homicide for the death of motorist:

Homicide: An unlawful killing of a human being caused by the defendant.

Causation: To be guilty, the defendant must have been the actual cause and proximate cause of the death.

Actual Cause: Established when, "but for" the defendant's acts, the death would not have occurred. Here, "but for" Angela and Bart's letting out the horses, the horses would not have been on the road, causing the motorist to swerve and crash. Actual cause established.

Proximate Cause: Established when the death is a foreseeable result of the defendant's conduct and there are no superseding events to break the chain of causation. Here, it is foreseeable that when one lets out a group of frightened horses that they will stampede off the property and cause injury to passersby. That one of those passersby was a driver who had to swerve to avoid them is foreseeable. Proximate cause established.

Murder: A homicide committed with malice aforethought.

Malice: Malice can be shown by an intent to kill; intent to cause serious bodily injury; depraved heart or a killing that occurred in the *res gestae* of a felony.

Here, Angela did not show any intent to kill, cause serious bodily injury or demonstrate a willful disregard for human life (depraved-heart) as she merely wanted to investigate whether animals were being abused. Further, most animal rights activists are peace-loving individuals so it is unlikely she had any intent to harm Motorist. As to felony-murder, they were simply at the barn to investigate, not commit a felony, so this does not apply either.

Since malice cannot be shown, Angela would not be guilty of murder.

Voluntary Manslaughter: A heat of passion killing or murder with mitigating circumstances.

Since malice cannot be established for murder, there was no adequate provocation or mitigating circumstances, Angela would not be found guilty of voluntary manslaughter.

Involuntary Manslaughter: An unintended homicide without malice aforethought. This can fall into two types: criminal negligence or misdemeanor-manslaughter.

Criminal Negligence: Reckless conduct which creates a great risk of death.

Here, Angela broke into Chris' barn, which created a risk that someone would be harmed. She had seen people going in and out of the barn at all hours of the day and night, so knew that there was some type of activity happening on the premises that was atypical. Further, breaking into someone else's dwelling at night creates a risk in and of itself. That she then fled after being confronted by Chris and let out a group of frightened stampeding horses further created a high risk of death. She had other options other than fleeing and letting the horses out -- she could have stopped, raised her arms, etc.

Defenses: There are no viable defenses.

Angela will likely be found guilty for the involuntary manslaughter for the death of Motorist.

**Bart's criminal liability:**

I. **Conspiracy:** supra. If it can be found that Angela & Bart did have a criminal intent when they agreed to investigate possible horse abuse, Bart will be liable for conspiracy.

Pinkerton's Rule: One is liable as a co-conspirator for all the crimes committed by their co-conspirators that were a natural and foreseeable consequence of the crime or done in furtherance of the crime.

II. **Burglary:** Discussion supra. (incorporated by reference). Bart will likely not be found guilty of burglary.

III. **Homicide:** Discussion supra. (incorporated by reference). Here, Bart and Angela were equal participants in the activities of the night and the facts state that Angela & Bart fled, letting out the horses. While it is not clear if one or the other actually let the horses out, this is irrelevant, as co-conspirators are liable for the crimes committed by the other. Accordingly, Bart will be found guilty for involuntary manslaughter in the death of Motorist.

**Chris' criminal liability:**

I. **Assault** (towards Angela & Bart): An intentional causing of an apprehension of an immediate harmful or offensive contact, or an attempted battery.

Here, Chris pointed his gun and pointed it at Angela & Bart, which would likely cause Angela & Bart to fear getting shot at. Further, while the gun may have accidentally discharged, Angela and Bart likely did not know it was an accident and the fact that they fled demonstrates that they had an apprehension of getting shot (a harmful contact.).

Defenses: Defense of Property One is privileged to use a reasonable amount of force as reasonably believed necessary to protect one's property. In any event, it cannot be deadly force unless the owner is in fear of death or serious bodily injury towards themselves.

Here, Chris was surprised by the intruders and pointed his gun at them to protect his property. While the gun was certainly a threat of deadly force, he did not actually intentionally discharge it or fire at them, so it can be argued that his actions were reasonable under the circumstances as he used absolutely no intentional physical violence at all towards Angela and Bart, but rather just wanted to scare them.

It is likely that Chris' defense will prevail and he will not be found liable for assault.

**II. Receiving Stolen Property:** Knowingly accepting property that one knows or has reason to know is stolen.

Here, it is unclear how that property got to Chris' barn, but it can be presumed that since there were people going in and out of the barn at all hours of the night, that Chris was accepting the property knowing it to be stolen. As he runs a horse ranch and the horses are housed inside the barn, this is a place he would need to enter daily to care for the horses, so of course he would see that there was a large amount of stolen electronic equipment in there. Accordingly, he cannot claim that someone put it in there without his knowledge.

Chris would be found guilty of receiving stolen property.

## **Answer B to Question 1**

### **State V Angela (A)**

#### **Solicitation**

Encouraging inciting another to commit a crime. May merge with target crimes and defendant will be charged with greater crime.

When A suggested to B that they go to the horse ranch owned by C, she solicited B to commit the crimes stated infra.

A will be guilty of solicitation.

#### **Conspiracy**

Agreement between two or more persons to commit an unlawful act or a lawful act by unlawful means.

Facts do not indicate that B expressly agreed to go to C's ranch and investigate, but since he accompanied A, the State will argue there was an agreement.

A will be found guilty of conspiracy.

#### **Trespass to land**

Intentionally entering the land of another without consent or privilege.

When A climbed the fence and crossed the yard to gain access to the horse ranch owned by Chris (C), it would appear she was trespassing on the land of another with consent.

## **Burglary--Common Law**

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

When A opened the door to the barn, she committed a breaking. When she stepped inside, she entered. Facts do not indicate if the barn was considered curtilage (if it was situated near enough to the dwelling to be considered part of the area), so the dwelling element may fail. Further, facts do not indicate if it was nighttime or not. Since A and B are animal rights activists, it may be inferred that they intended to unlawfully interfere with the horses, but facts are not clear.

She will not be guilty of common law burglary.

## **Modern law burglary**

Breaking and entering into any structure with specific intent to commit a crime therein.

Since A did break, enter and may have had intent to commit a crime, she may be found guilty of modern law burglary.

## **Defenses**

### **Necessity**

A may claim that her trespass and all other crimes were necessary to stop possible abuse of animals. State will argue that she simply could have been informed law enforcement instead.

This defense will fail.

## **State V Bart (B)**

### **Accomplice Liability**

Accomplice liability may be found if a defendant has knowledge, intent and actively assist in the perpetration of a crime.

Facts state B was with A during the incident, and that they are both animal rights activists working in concert. He was an accomplice to the crimes of A.

### **Conspiracy**

Defined supra.

B will be found guilty as a co-conspirator.

### **Pinkerton's rule**

All members of a conspiracy are liable for all crimes in furtherance or probable consequence of.

B will be found guilty of all crimes A is charged with.

### **Defenses**

#### **Necessity**

Defined supra.

This defense will fail.

## **State v Chris (C)**

### **Possession of stolen property**

Facts only indicate that the stolen property was in the barn on C's property. It could be inferred that the stolen property belonged to C, but since facts do not support, this charge will fail.

### **Assault**

Attempted battery.

When C pointed the rifle at A and B, he committed an assault. Since he used a deadly weapon, he could be charged with aggravated assault.

### **Attempted murder**

Attempt can be shown through specific intent, apparent ability, and moving from preparation to perpetration.

When C went to his barn with his rifle, he showed specific intent that could lead to injury. Since he had a gun, he was apparently able to injure and when he pointed it at A and B and it discharged, he went from preparation to perpetration of the crime.

C could be charged with attempted murder.

### **Homicide of Motorist (M)**

The killing of one human being by another.

A motorist (M) who was driving down the road died, so there was a homicide.

## **Murder**

The unlawful of one human being by another.

When C discharged his rifle, he caused a chain of events which culminated in the death of the motorist.

## **Causation**

### **Actual cause**

But for C discharging the rifle, M would not have been killed.

C is the actual cause of the death of M.

### **Proximate cause**

It is foreseeable that when one discharges a firearm that someone could get injured or killed. C will argue that the bullet hit the side of the barn and that the horses stampeding into the road was an intervening act, thus breaking the chain of causation. State will argue that the intervening act is foreseeable and the animal reaction was a normal response to the gun firing. Moreover, it is foreseeable that a motorist would swerve to avoid hitting animals and possibly crash.

C is the proximate cause of the death of M.

## **Malice**

The mens rea of murder may be found through 1) specific intent to kill, 2) specific intent to seriously injure, 3) wanton, conduct/depraved heart, and 4) felony murder.

The facts state that C accidentally caused the rifle he was carrying and had pointed at A and B, to discharge. It would appear that he did so accidentally, so if the state cannot establish malice, C would be charged with involuntary manslaughter (see below).

## **Second-degree murder**

All murders other than first-degree.

If the state can prove malice through wanton conduct, C may be charged with second degree murder.

## **Involuntary Manslaughter**

The accidental killing of one human being by another without malice, but with gross negligence.

The facts state that the gun accidentally discharged as C pointed it at A and B. State will argue that his actions were reckless and negligent. C will argue that the firing of the gun was an unfortunate accident.

C could be found guilty of involuntary manslaughter absent any defenses.

## **Defenses**

### **Defense of property**

Use of reasonable force to protect property.

C will contend that he was surprised to see A and B intruding on his property, and he was within his rights to defend it. Since use of deadly force is only permitted when one's life is at danger, it appears C exceeded his privilege since the facts do not indicate his life was in any imminent danger from A and B.

This defense will fail due to the excessive force used.

## **QUESTION 2**

Abe wanted to cut down a tree that was growing on public property bordering his house because he did not want to rake its leaves. When Abe attempted to do so, Bill, who lived across the street, demanded that he stop. Abe refused and, holding his saw in front of him, took two steps toward Bill. Avoiding Abe, Bill climbed high into the tree, insisting he would not come down because he wanted to save the tree. Abe nevertheless sawed through the trunk of the tree, which fell into the street with Bill in it, causing Bill serious injuries.

Cindy, a passerby, rushed to help Bill. As she was assisting him, she was struck by a car and sustained serious injuries.

Debbie, a neighbor, watched the entire incident from her front porch and suffered severe emotional distress as a result.

1. Is Bill likely to prevail on any intentional tort claim against Abe? Discuss.
2. Is Cindy likely to prevail on a negligence claim against Abe? Discuss.
3. Is Debbie likely to prevail on a negligent infliction of emotional distress claim against Abe? Discuss.

## **Answer A to Question 2**

### **I. Bill v. Abe**

#### **Assault**

Assault is to intentionally cause the reasonable apprehension of an immediate harmful or offensive touching in another person. Intent is either the conscious desire to bring about the result or the substantial certainty that such a result will occur. Here, Abe, while holding his saw in front of him, took two steps towards Bill. Abe may have simply been proceeding with his plan to cut down the tree, and may not have had any intention whatsoever to cause Bill any apprehension. However, because this was a confrontational situation, a reasonable person would have had the substantial certainty that his act would cause such apprehension in Bill; therefore the intent element is satisfied. Bill took steps to avoid Abe, which shows that he likely felt apprehension because of Abe's act, and this would be reasonable under the circumstances as this was a confrontational situation. Abe is most likely liable for assault.

#### **Battery**

Battery is the intentional cause of harmful or offensive touching of another person. Intent is clearly satisfied here, because Abe had substantial certainty that Bill would suffer a harmful touching by Abe's voluntary act of cutting down the tree. Abe is liable for battery.

#### **Defenses--**

Abe really doesn't have any defenses to either of these torts, but he could argue necessity. Necessity is a valid defense if the harm avoided outweighs the harm inflicted. Here, the harm avoided would be Abe's raking leaves, and the harm inflicted is Bill's serious injuries. Clearly the harm avoided does not outweigh the harm inflicted, so this defense would fail.

## **Conclusion--**

Bill would prevail for the intentional torts of assault and battery. Damages are presumed for intentional torts.

## **II. Cindy v. Abe**

### **Negligence**

A person is liable for negligence if they owe a duty, the duty is breached, they are the cause of harm, and the other party suffers damages.

Duty-- Generally one owes a duty of reasonable care to all foreseeable plaintiffs under the circumstances. Here, there are no special relationships between Cindy and Abe, so Abe will be held to this reasonably prudent person standard.

Breach-- The duty is breached if the defendant fails to act as a reasonably prudent person under the circumstances. One method to determine if a duty is breached is to compare the burden to avoid the harm and the utility of the defendant's conduct against the gravity of harm combined with the likelihood of the harm. Here, Abe's burden to avoid any harm was rather low, since all he needed to do was not cut down the tree. Additionally, Abe may have been able to simply contact the local municipality and have them address his problem with the tree. The utility of Abe's conduct is also rather low, since his only benefit was the relief from having to rake leaves. The gravity of the harm suffered by Cindy was great as she suffered serious injury. The likelihood of Cindy suffering such injury was also relatively high, since Abe knew that Bill was in the tree and was likely to be injured, which would prompt a passerby to assist Bill. Based on this analysis, Abe breached his duty of reasonable care to Cindy, since the gravity of harm and the likelihood of harm greatly outweigh the burden to avoid the harm and the utility of Abe's conduct.

Causation-- In order to be liable for negligence, the defendant must be both the actual cause and proximate cause of the harm.

Actual cause-- one test used to determine actual cause is the but for test; but for Abe's cutting down the tree, would Cindy have been injured? Clearly the answer is no, so under this test Abe is an actual cause of harm. Another test used to determine actual cause is the substantial factor test; was Abe a substantial factor in Cindy's harm? Again the answer is clear; Abe was a substantial factor in Cindy's harm. Under either test, Abe is an actual cause of harm.

Proximate cause-- Were there any intervening acts which caused Cindy's harm? Abe may contend that the car which struck Cindy was an intervening act, but this act was foreseeable since the tree was caused to fall into the street. Therefore, this intervening act would not cut off liability. Next we ask, was the harm suffered by Cindy foreseeable? Since the tree had fallen in the street, and since Bill was in the tree when it was cut down, it was entirely foreseeable that a passerby would stop to render aid to Bill. It is also foreseeable that Cindy would suffer both the type of injury suffered and the extent of the injury. Therefore, Abe is a proximate cause of Cindy's harm.

Damages-- Cindy suffered serious injuries, so this element is obviously satisfied.

Defenses--

Assumption of the risk occurs when the plaintiff knows of the danger involved and voluntarily proceeds anyway. The facts do not state if Cindy knew of the car coming which caused her injury. Even if she did know of it, Cindy could argue that her act was not voluntary because Bill was in peril and required rescue.

Comparative fault/Contributory negligence-- If Cindy failed to act in a reasonable way and was a cause of her own injuries, then she could be found to be comparatively at fault or contributory negligent, depending on the jurisdiction. The majority rule is comparative fault, which states that plaintiff's damages will be reduced by the proportion of their fault in their own injury.

Contributory negligence states that plaintiff's recovery will be barred if found to be a cause of their own injury. Cindy can claim that she acted perfectly reasonable under the circumstances, because there was an emergency situation. Under emergency situations, the actor is to act reasonably under the circumstances at hand, even if in hindsight it is shown that they did not take the wisest course of action. Cindy most likely will be found to have acted reasonably under the circumstances, and her recovery will not be reduced or barred.

Conclusion--

Cindy will prevail and she will be entitled to compensatory damages which would include medical expenses, lost time from work, and pain & suffering. If it was found that Abe acted maliciously, then punitive damages may also be awarded.

**III. Debbie v. Abe**

**Negligent Infliction of Emotional Distress (NIED)**

Debbie is a bystander; bystander NIED is established if the defendant, through negligence, causes emotional distress to a bystander who witnesses the event, the witnessing of the event is what causes the emotional distress, and if the bystander is a close relative of the one who is injured. Debbie is a neighbor, and not a close relative, so this action would fail. Abe is not liable for NIED.

## **Answer B to Question 2**

### **Bill v. Abe**

#### **Assault**

Assault is the intentional infliction of reasonable apprehension of imminent harmful or offensive contact to another without consent.

Here when Abe went to cut down the tree and Bill demanded he stop, Abe took two steps towards Bill with his saw in front of himself. We next learn that Bill, to avoid Abe, climbed high into the tree. This shows Bill's apprehension of possible harmful contact with Abe and his saw. Since a saw can be used as a deadly weapon, that would at least would cause serious harm, it is reasonable for Bill to feel apprehension of Abe. The only question that remains is that of intention.

Intent is the conscious desire or knowledge that a result will occur or the substantial certainty a result will occur. Since we know Abe wanted to cut the tree down because of the leaves that were left on his lawn, and also that Abe refused Bill's attempt to stop his action, it is reasonable to ascertain Abe was substantially certain approaching Bill with the saw would make him apprehensive and leave, allowing him to continue to cut the tree down.

We also know from the facts, that nowhere does Bill consent to the assault.

Abe would be liable for assault on Bill.

#### **Battery**

Battery is the intentional infliction of harmful or offensive contact on another without consent.

Intent defined supra.

When Abe proceeded to cut down the tree, knowing Bill was in the tree, we can reasonably assume Abe was substantially certain Bill would fall with the tree.

Since we also know that the fall caused Bill serious injuries, the contact by Abe, made via the saw, to the tree, to the street was harmful contact.

Abe would be liable to Bill for battery.

### False imprisonment

False imprisonment is the intentional confinement of another, to a defined area against their will.

Intent defined supra.

Abe will argue Bill was not confined in the tree, although this was a defined area, as he could have climbed down at any time.

Bill will argue that since Abe threatened him with the saw prior to climbing the tree, he felt continued intimidation by Abe and his saw if he did not climb down. He will argue it was unreasonable to climb down in the face of such risk.

Additionally Bill will argue that he was up in the tree against his will because of the above risks.

It is likely Abe will be liable for false imprisonment of Bill.

### **Cindy v. Abe**

Liability for negligence requires proof of a duty of care owed by the defendant to the plaintiff, a breach of that duty, and that the breach was the actual and proximate cause of damages suffered by the plaintiff.

#### General duty

Everyone owes a duty to use due care so as not to expose others to unreasonable risks of harm.

Here Abe owes a duty to Cindy so as not to expose her to unreasonable risks of harm.

#### Special duty

Here, the special relationship of Cindy to Bill: that of victim to rescuer extends any duty of Abe to Bill to include Cindy. This was expressed in the landmark case adjudicated by Judge Cardozo which led to the expression "danger invites rescue". Since Abe was responsible for Bill needing rescue, Abe is also liable to any rescuer of Bill, whom he placed in danger.

Therefore, Abe owes a special duty to Cindy.

#### Breach

Breach is a failure to act as a reasonable person in the same or similar situation as one with a similar duty. This is often measured using the Learned Hand calculus, measuring the risks versus the utility.

Here, Abe cut the tree down, which contained Bill and knowing he would fall and likely be hurt, requiring a potential rescuer. The utility of cutting the tree down, merely so he did not have to rake up the leaves, is not worth the significant risks of serious injury or death from doing so. Abe acted in an unreasonable fashion.

Abe breached his duty to Cindy.

### Actual cause

An actual cause is the cause which starts, ignites or makes possible the results which follow and fills the “but for” or substantial certainty test.

“But for” Abe cutting down the tree, Bill would not have fallen and gotten hurt. If Bill had not gotten hurt, Cindy would not be required to come to his aid. If Cindy did not come to his aid, she would not have been struck by a car and sustained serious injuries.

### Proximate cause

An actual cause of harm is also the proximate cause of harm if what follows is a natural, unbroken chain of events, uninterrupted by independent, unforeseeable intervening events, and results in the harm.

Here, Abe may argue it is not foreseeable that a rescuer would be struck by an automobile, trying to help someone who fell in a tree. The argument will likely fail since the tree abutted the street and the tree fell in the street where cars are likely to be found. Since Cindy had no choice where to treat Bill, it is foreseeable she may be injured from a passing car.

Abe’s breach is the proximate cause of Cindy’s injuries.

### Damages

Damages include special damages such as actual monetary expenditures and lost wages as well as general damages such as pain and suffering. Damages may also include punitive damages, to set an example of the defendant and possibly loss of consortium.

We are told in the scenario that Cindy sustained “serious injuries”. These will likely require hospital bills, time off of work as well as pain and suffering she sustained from the accident. It is also likely a court may find Abe’s behavior reckless and grossly negligent and may impose punitive damages.

Cindy sustained damages.

Abe will be liable to Cindy for negligence.

## **Defenses**

### **Contributory negligence**

In some jurisdictions, if it is found that the plaintiff contributed in some way to their damages, it may bar any recovery from the defendant. In other jurisdictions of comparative fault, if the plaintiff contributes to a portion of his damages this may be reduced from the monetary award in judgment by the percentage that the plaintiff is at fault. Further, if the plaintiff had the last opportunity to avoid harm by taking appropriate action, his recovery may be barred in the last clear chance doctrine.

The only potential argument to be raised by Abe is that Cindy contributed to her own injuries by being in the street, placing her at risk for injury. But, as discussed above, this argument will fail as she had no choice where to treat Bill.

No successful defenses will be raised.

## **Debbie v. Abe**

### **Negligent infliction of emotional distress**

Negligent infliction of emotional distress is the negligent conduct of extreme and outrageous nature which causes severe emotional distress of one in the zone of danger.

Negligent conduct defined and described supra.

Abe was negligent.

Abe will argue his actions were not extreme or outrageous since his use of the saw to cut a tree down is common practice and sometimes people get hurt during this process. Debbie will argue it is extreme and outrageous when one attempts to cut a tree down with someone up in the tree that is likely to sustain severe damages.

Abe's conduct was extreme and outrageous.

We're told in the facts that Debbie suffered severe emotional distress so this would not be an issue.

Abe will argue Debbie was not in the zone of danger. Although Debbie was a neighbor and watched the incident from her porch, Abe will argue she had no significant relationship to Bill that would cause her severe emotional distress. Most courts require some relationship between the plaintiff and the victim of the negligent action. Here no such relationship appears to exist.

Debbie will argue she is a neighbor of Bill and this should constitute a sufficient relationship.

Abe will further argue that most courts will require some form of physical manifestation of the severe emotional distress for a successful claim and the facts do not state Debbie suffered any physical ailments from her emotional distress.

It is unlikely that she will prevail in an action for negligent infliction of emotional distress against Abe.

### **QUESTION 3**

Sally wanted to sell an antique doll that she had inherited. She posted a photograph of the doll on her Facebook page with a note stating:

Last month, one just like this sold on eBay for \$650! I'll sell it to any of you for \$450. First person I hear from gets it. Otherwise, after five days, I'll sell it on eBay. Call me - no Facebook allowed at my job.

That same day, Barbara, one of Sally's Facebook friends, saw Sally's post. She believed that the doll might be worth more than \$450. She soon learned from a local antique dealer that it was worth \$1,500. She used her tablet computer to go on Sally's Facebook page. There, she saw a note posted by Judy, another Facebook friend of Sally, stating: "The doll is worth way more than you think. Don't sell it." Barbara then left a note stating, "I'll take the doll for \$450. Barbara." Later, she called Sally and said, "This is Barbara, and I'll buy the doll for \$450." Sally replied, "Sorry, you're too late." Barbara looked again at Facebook and saw a new note from Sally stating: "Thanks for the information, Judy. The doll is going straight to eBay."

1. Did Barbara enter into an enforceable contract with Sally? Discuss.
2. If Barbara entered into an enforceable contract with Sally, what remedies, if any, does she have? Discuss.

### Answer A to Question 3

Barbara v. Sally

In order for Barbara to establish there was an enforceable contract she will have to establish there was a valid offer, a valid acceptance, and consideration. Since this subject is the sale of goods, tangible moveable items, the governing law is the UCC.

Was the posting on Facebook a valid offer?

Offer. An offer consists of a present intent by the offeror to be contractually bound by the certain terms of the offer and conveyed to an offeree with reasonable assumption that agreement to those terms would form a bargain/deal.

Here the offeror (Sally) is manifesting the present intent because she expressly states "first person I hear from gets it". A valid offer usually requires identifiable parties, description of the good, quantity, and price, but the UCC does allow for gap fillers when terms are missing, so long as the quantity is stated in the offer. Here the parties are identified as Sally and the offerees as her Facebook friends. The goods are identified because it is a doll and the price is \$450, the quantity is one, so therefore there is valid offer.

Was the posting on Sally's Facebook page an acceptance of the offer?

Acceptance. An Offeror is said to be the master of his offer and can expressly limit the terms of acceptance. If there are no express terms stated for acceptance then an offeree may use reasonable means to announce his acceptance. If the offer was mailed to the offeree and no express conditions on acceptance were part of the offer, then the offeree would be able to accept by mailing his response of acceptance back to the offeror. Additionally, under the doctrine of the "mailbox" rule an offer is accepted upon dispatch, provided it is properly addressed, and has the proper postage.

Here the offer did express a limit on the way the offer could be accepted and stated "call me -no Facebook allowed at my job." Therefore the posting of an acceptance on the Facebook page would not be a valid acceptance.

Was the phone call a valid acceptance?

This would be a proper way to accept the offer because the offer clearly stated "Call me", but the offer was no longer available so we must look to see if there was a proper revocation of the offer.

Was there a proper revocation of the offer?

An offeror may revoke an offer prior to acceptance, but must notify previous offerees of the revocation. If an offer is made to the public at large then usually a revocation can be published in the same manner the offer was published (i.e. if the offer was made in the newspaper then a posting in the newspaper that the offer has been revoked will suffice); however, if the offer is made to a certain individual then the offeror must convey the revocation directly to the offeree. In that case, the revocation is effective when the offeree receives the revocation.

Here the original offer was made on Facebook to all of Sally's Facebook Friends, which could be a few or thousands, so the proper way to revoke the offer would be to place a notification that the offer has been revoked. In this case that is what Sally did. Barbra will try to argue that she did accept the offer by posting "I'll take the doll for \$450" and under the common law this would be a "mirror image" of acceptance and proper acceptance, but the offer did state "Call me", which apparently Barbara did after Sally posted the revocation. Barbara will argue that Sally would have to have seen her acceptance because, even though Sally said there was no Facebook allowed at her work, she may have posted the revocation during a break when she did have access to Facebook.

Barbara's argument will fail because she did not accept the offer in the manner as stated in the offer.

Consideration: As this is a sale of goods, consideration is not an issue because consideration is always present in a sale of goods because the seller is giving up something in return for something of value (usually money).

Conclusion. There is not an enforceable contract because there was not a valid acceptance.

Damages/Remedies. A non-breaching party may seek damages in the form of specific performance. Expectation damages or restitution.

Specific Performance is available when the breaching party is selling unique goods or real estate and monetary damages are inadequate and justice can only be accomplished by enforcement. Here it is possible to get specific performance because an antique doll would be presumed to be rare, even though it appears there seems to be regular sales as indicated by the comment of "one sold on eBay last month for \$650", and friends found out an antique dealer stated it was worth \$1,500.

Restitution is available to get back to the buyer any value already paid to the seller. In this case there was none so there would not be any restitution available.

Expectation damages attempts to place the buyer in the same position as if the deal had gone through and in this case, it would be to get a doll for \$450 that is worth \$1500. The expectation damages, assuming that Barbara was going to resell the doll, would be the difference between the contract price and the \$1500.

## **Answer B to Question 3**

### Common Law vs. UCC

UCC governs contracts for the sale of goods. Goods are tangible moveable items. An antique doll is tangible since one can touch and feel it and it is moveable, therefore Sally's antique doll is a good. Since Sally's antique doll is a good, and since the UCC governs the sale of good, the UCC governs in this case.

### Merchant

Neither Sally nor Barbara regularly engage in the business of manufacturing, buying, or selling dolls. Thus neither Sally nor Barbara are considered merchants with respect to the sale of Antique Dolls.

### Offer

An offer is an outward manifestation to presently enter into a bargain that is communicated. To be specific in terms an offer has to have quantity, time for performance, identify of the parties, price, and subject matter. An offer vests the power of acceptance in an offeree. An offer has to specific in terms. Furthermore, an offer has to be accepted in the manner prescribed by the offeror, if such a manner is provided for in the offer.

### Sally's posting on Facebook as an offer

Sally's posting on Facebook was an outward manifestation since it was posted on Facebook and it was communicated since Judy and Barbara saw it, evidence by Judy posting a note that said "The doll is worth way more than you think. Don't sell it" and Barbara left a note stating "I'll take the doll for \$450. Barbara". It was an outward manifestation to enter into a bargain since it stated "I'll sell it to any of you for \$450", the language used of "sell" indicates a willingness to presently enter into a bargain.

### Specific Terms:

Quantity - Here Sally's posting was for one antique doll that she inherited, thus there is quantity.

Time for Performance - Here Sally's posting stated "First person I hear from gets it. Otherwise, after five days, I'll sell it on eBay" Thus time for performance is five days. Thus, there is time for performance.

Identity of the Parties - Here Sally's posting was not specific as to the identity of the parties; however since it was posted on Facebook the parties would be whomever can see the posting. Under the UCC lack of identity of the parties would not invalidate an offer.

Price - Here Sally's posting indicated "I'll sell it to any of you for \$450"; thus the price is \$450. There is price.

Subject Matter - Here Sally's posting had a photograph of the doll. One would argue that the photograph clearly delineated the subject matter of Sally's posting. Lack of subject matter does not necessarily void an offer under the UCC.

Manner of Acceptance - Here Sally's posting specifically say's "Call me - no Facebook allowed at my job", thus acceptance would have to be via calling Sally.

Sally's posting is likely an offer.

#### Sally's posting as an advertisement or invitation to offer

Since, Sally's posting was not directed to a specific person and stated "I'll sell it to any of you...." Sally may try to argue that her posting constituted an advertisement which is usually viewed as an invitation to offer and not an actual offer. This argument would likely fail since Sally is not a merchant or in the business of selling dolls such that it is unlikely that she would advertise, and furthermore there is only one doll and not many.

#### Acceptance

Acceptance is an offeree's unequivocal agreement to be bound by the terms of an offer. An offer has to be accepted in the manner prescribed by the offeror, if such a manner is provided for in the offer.

### Barbara's Facebook posting as acceptance.

Here when Barbara posted on Facebook saying, "I'll take the doll for \$450, Barbara" it seems to signify Barbara's unequivocal agreement to be bound by the terms of Sally's offer, however since Sally's posting stated "Call me - no Facebook allowed at my job", Sally would argue that her offer specifically provided the manner by which acceptance can be effectuated, by calling and not Facebook, such that Barbara's purported acceptance was not within the manner prescribed by Sally and thus is not effective. Barbara's acceptance on Facebook is not a proper acceptance of Sally's offer.

### Barbara's call to Sally as acceptance

Here when Barbara called Sally and said "This is Barbara, and I'll buy the doll for \$450" this signified Barbara's unequivocal agreement to be bound by the terms of Sally's offer and was within the manner prescribed by Sally, since Barbara called Sally. If Sally's offer was still open then Barbara's call to Sally likely resulted in a valid acceptance by Barbara of Sally's offer - see below on withdrawal of offer.

### Sally's withdrawal of her offer

Although Sally's offer appears to indicated that she will hold it open for five days since she said "First person I hear from gets it. Otherwise, after five days, I'll sell it on eBay". Since Sally is not a merchant her offer is not a firm offer and is therefore revocable unless the option to hold it open is supported by consideration. Since Sally received no consideration from Barbara to hold her offer open, her offer is revocable any time prior to acceptance. An offer is generally revocable prior to acceptance. Here the facts do not state whether Sally's new note on Facebook stating "Thanks for the information, Judy. The doll is going straight to eBay" came before or after Barbara's call (see above). To the extent the note was posted before Barbara called Sally it likely constituted a effective withdrawal of Sally's offer. To the extent that the note was posted after Barbara had already called and accepted Sally's offer, Sally would not be able to withdraw her offer subsequent to acceptance.

Even if Sally's new note was posted prior to Barbara's acceptance, Barbara would argue that she did not receive the withdrawal prior to her acceptance and argue that withdrawal of an offer is only valid upon receipt, however since Sally's withdrawal was communicated in the same manner as her offer she would argue that her withdrawal was effective when it was posted.

### Consideration

Consideration is something of value. Here the doll is something of value and \$450 is also something of value, as such there is valid consideration.

Barbara entered into an enforceable contract with Sally if Sally did not effectively withdraw her offer prior to Barbara's call accepting Sally's offer.

### Unilateral Mistake

Although a unilateral mistake doesn't excuse performance, however if the non-mistaken party knows of the mistaken party's mistake, the mistaken party can void the contract. To the extent Barbara has an enforceable contract with Sally, Sally could argue that Barbara knew that Sally was making a mistake with respect to the value of the doll since Judy posted, "The doll is worth way more than you think. Don't sell it", and because Barbara had found out from a local antique dealer that the doll was worth \$1,500. If Sally is successful in arguing that Barbara knew of Sally's mistake then Sally would be able to void the contract.

### Monetary Damages

Barbara could ask for monetary damages in the amount of the difference between the fair market value of the doll and the selling price of \$450.

### Specific Performance

Alternatively Barbara could request specific performance by Sally. Specific performance is usually available when the subject matter is unique, here since the doll is antique and one of a kind it is likely unique such that Barbara could request the remedy of Specific Performance whereby Sally would have to tender to Barbara the doll for \$450.

## QUESTION 4

In a series of nighttime burglaries, a burglar broke into houses when the owners were away and stole items of value. The burglar ate cookies found at each house and therefore became known as the “cookie bandit.”

Wanting to protect his property and prevent a burglary while he was out of town for the weekend, Dan planned to lace some cookies with cyanide and leave them on his kitchen counter. He believed his plan was lawful because he had been told by a police officer that he could use deadly force to prevent a burglary. He asked his friend Ann to help him obtain cyanide. She tried to talk him out of his plan, but he assured her that it was lawful. She then got him some cyanide. He laced some cookies with it, left them on the kitchen counter, and went out of town for the weekend.

During Dan’s absence, his neighbor Jane entered his house, together with her five-year-old son, Victor. Each weekend, Jane cleaned Dan’s house. While Jane was cleaning, Victor found the cookies, ate one, and died.

1. With what crimes, if any, can Dan reasonably be charged, and what defenses, if any, can he reasonably raise? Discuss.
2. With what crimes, if any, can Ann reasonably be charged, and what defenses, if any, can she reasonably raise? Discuss.

## Answer A to Question 4

Dan (D)

Ann (A)

Victor (V)

**1. With what crimes, if any, can Dan reasonably be charged, and what defenses, if any, can he reasonably raise?**

### Solicitation

The inciting and inducing of another to commit an unlawful act.

When D asked A for her help in obtaining cyanide for the purpose of baking poisonous cookies, which he intended any burglars to eat, he incited A to commit a crime because poisoning another person is not lawful. Even though A initially objected, she did eventually agree and D both incited and induced A to commit an unlawful act.

D will be found guilty of solicitation.

### Conspiracy

The agreement between two or more people to commit an unlawful act, or to commit a lawful act through unlawful means.

The facts show that D had an intent to poison any burglar who entered his home while he was away and that he enlisted the aid of A to help him accomplish this goal. Because poisoning another human being is not lawful, in addition to the fact that D did so with the knowledge that it would likely cause death, which is also unlawful, D agreed to commit an unlawful act with A.

D will be found guilty of conspiracy.

### Pinkerton's Rule

Any crime, which is committed in furtherance of the crime and which is the reasonably foreseeable or probable result of the crimes being committed by the conspirators, will be chargeable to all co-conspirators.

The facts indicate that A and D are co-conspirators and as such D will be held liable for any actions which are taken in furtherance of the crime, or which are the reasonably foreseeable or probable result of the crime, even if they were crimes committed by A.

### Homicide of V

The killing of a human being by another human being.

V died after eating D's poisoned cookie.

### Causation

D must be both the actual cause and the proximate cause of V's death.

### Actual

But for D lacing cookies with cyanide and placing them on his counter, V would not have eaten the cookies and then died.

D is the actual cause of V's death.

### Proximate

It was reasonably foreseeable that when D created a poisonous cookie and subsequently placed them in the open in his home, that V could potentially eat one of the cookies and die as a result. D will argue that his home is private and it was unforeseeable that V would be in his home while he was away. However, the facts indicate that Jane, V's mother, cleaned D's home every weekend and thus it was

foreseeable that V and his mother would be in D's home and that either of them would eat one of the cookies.

Thus D is the proximate cause of V's death.

## Murder

The malicious killing of another with malice aforethought.

Murder may be shown through the intent to kill, the intent to cause serious bodily harm, actions committed with a reckless and wanton disregard for life (a depraved heart), or through the felony murder rule.

## First-Degree Murder

First-degree murder may be shown through the specific intent to kill, with premeditation and deliberation, where there is no cooling down period. It may also be shown through the general and special felony rule, or through poison, bombing, or lying in wait.

Here the facts do not provide any information indicating that D had a specific intent to kill V, nor was he in the commission of a felony that was not linked to the death. However, D did intentionally poison the cookies which he then left on the counter with the intent that a burglar would eat one and then die. While there was not a specific intent to kill V, the use of poison with the intent to kill is enough to find D guilty of first-degree murder.

D will be found guilty of first-degree murder.

## Second- Degree Murder

Any murder which is not murder in the first degree.

If D is not found guilty of first-degree murder, due to a defense, he may still be charged with second-degree murder if it is shown that D acted with a depraved heart, or that he had an intent to kill (regardless of premeditation or deliberation) or cause serious bodily harm. D planned and purchased cyanide, which he then used in the baking of cookies with the knowledge, specific intent and malice to possibly cause the death of another. The fact that D did not intend V to be the person who was killed by his cookies does not excuse the reckless and depraved heart behavior with which D acted.

D will be found guilty of second-degree murder.

### Defenses

#### Voluntary Manslaughter - Mitigation

Voluntary manslaughter is murder which has been mitigated due to possible defenses used by the defendant.

D does not qualify for any mitigation and will not be able to use mitigation.

#### Justification - Defense of Property

A landowner may use deadly force to protect their property, if under a reasonable threat of harm.

D was not present at the time of the killing and was certainly not under a reasonable threat of harm which would be sufficient to warrant the use of deadly force.

D will not be successful in a defense of property defense.

#### Justification - Crime Prevention

Deadly force may be used if it reasonable in the prevention of criminal activity.

No criminal activity actually took place in D's home. In addition, using poison as a means of protecting your home from a potential burglar would also not be deemed reasonable.

D will not be successful in a crime prevention defense.

### Excuse - Mistake of Law

D will argue that he had reliable information from a police officer that his actions were legal and he therefore did not have the requested *mens rea* to commit the crimes with which he has been charged. However, a mistake of law is not allowed as a valid excuse for the use of deadly force and it will not excuse D's behavior.

D will not be successful in a mistake of law defense.

### Attempted Murder of Burglars

#### Murder

Defined supra.

#### Attempt

A person may be charged with the crime of attempt if it can be shown that the person had the specific intent to commit the crime, that the person had the apparent ability to commit the crime, that the person took steps beyond preparation and began the perpetration of the crime, and that due to a factual rather than just a legal impossibility, the crime was not completed.

#### Specific Intent

When D discussed his plan with A and told her that he was permitted to defend his home with deadly force and was going to, therefore, bake deadly cookies, it is shown

that he had the specific intent to commit the crime of murder.

#### Apparent Ability

D did effectively kill a person with the cookies he had intended for the burglars. D therefore had the apparent ability to commit murder.

#### Preparation versus Perpetration

D took the steps in preparation, as well as actually committing, the crime of murder, thus actually attempting to perpetrate the crime of murder.

#### Factual Impossibility

The reason that the murder of the burglars was not committed was due to a factual impossibility. The burglars did not show up to Dan's home, making it factually impossible for them to eat the cookies he had poisoned for them. This factual impossibility does not excuse D from the attempted murder.

D meets all the requirements of attempt and will be found guilty of attempted murder of the burglars.

**2. With what crimes, if any, can Ann reasonably be charged, and what defenses, if any, can she reasonable raise? Discuss.**

#### Conspiracy

Discussed and defined supra.

A will be found guilty of conspiracy.

#### Pinkerton's Rule

Any crime, which is committed in furtherance of the conspiracy, or which is the

reasonably foreseeable or probable result of the crimes being committed by the conspirators, will be chargeable to all co-conspirators.

The facts indicate that A and D are co-conspirators and, as such, A will be held liable for any actions which are taken in furtherance of the crime, or which are the reasonable, foreseeable, or probable result of the crime, even if they were crimes committed by D.

### Accomplice Liability

When it can be shown that a person has taken a substantial step in the aiding, abetting, or the active assistance of a criminal act, that person may be held liable under, accomplice liability, for the crimes committed by the actual perpetrator.

When A agreed to help D by acquiring the cyanide he required to commit the crime of murder, she actively assisted him in the commission of that crime. A will be held liable for the actual perpetration of the crime.

## **Answer B to Question 4**

STATE v. DAN

SOLICITATION

Solicitation is the enticing, encouraging, and requesting another to commit an unlawful act, with the intent that the crime be committed.

Since there had been a rash of burglaries in the area while owners were away, Dan wanted to protect his home while he was going to be away. The bandit would eat cookies found at the homes and, therefore, had become known as the cookie bandit. Dan decided he was going to lace some cookies with cyanide, and leave them on the counter while he was gone, and asked Ann if she could help him obtain cyanide. By asking Ann to help obtain the cyanide, he was soliciting her help. He was requesting her to help him commit the unlawful act of placing poison in the cookies for the burglars to eat.

Conspiracy is an agreement between two or more people to commit an unlawful act. At common law it also required that a step be taken in furtherance of the conspiracy.

When Dan asked Ann to help him obtain cyanide, and she agreed to help him obtain some, there was an agreement. In addition, he had told Ann why he wanted the cyanide, to lace some cookies he planned to leave on his counter while he was gone, just in case the bandit burglarized his house while he was gone. By planning to poison someone, he was intending to commit the unlawful act of murder or battery at the least.

When she got the cyanide, there was a step in furtherance of the conspiracy.

Therefore, Dan can be charged with conspiracy.

## HOMICIDE

Homicide is the killing of a human being by another human being.

Vic died as a result of eating the poisoned cookies that Dan prepared.

Thus a killing occurred.

## ACTUAL CAUSE

But for Dan putting cyanide in the cookies, Vic would not have died.

## PROXIMATE CAUSE

Vic died as a direct result of eating the poisoned cookies. It is foreseeable that if poison is placed in cookies and someone eats them, he could die.

Therefore, Dan was the proximate cause of Vic's death.

## MURDER

Murder is defined as the unlawful killing of another with malice aforethought.

Malice aforethought is established through a desired intent to kill, a desire to cause serious bodily injury, reckless and wonton conduct, and felony murder.

Vic died as a result of eating the cookies laced with cyanide. Thus, there was an unlawful killing.

The State will argue that when Dan decided to lace the cookies with cyanide, knowing that ingesting cyanide can cause death, he was showing his desired intent that he wanted the person to eat the cookie to die.

The State can also argue that Dan knew that cyanide was poison, and even if death didn't result a person could become seriously ill. Therefore, it shows his intent to cause a serious bodily injury.

The State will also argue that, by placing cyanide in a cookie that someone might eat, shows a conscious disregard for human life. Therefore, the state can show he was showing a depraved heart.

Malice has been established.

Dan can be charged with murder.

#### FIRST-DEGREE MURDER

First-degree murder requires that there be premeditation and deliberation, or felony murder. It can also be found if the state proves that there was, the use of poison, lying in wait, bombing or terrorism.

The State will argue that when Dan decided to make the cookies and lace them with cyanide, he was premeditating or contemplating, how the killing should take place. Deliberation is a way of showing the death was coldblooded, that it was calculated. In deciding to lace the cookies, Dan calculated how he could best get at the burglars. The fact that it was Vic who ate the cookies doesn't change the fact that the death was premeditated.

In addition, the state will also argue that Dan used Cyanide to poison the cookies. Thus, the killing was a result of poison because Vic ate the poisoned cookies.

#### TRANSFERRED INTENT

Dan will argue that he never intended to kill Vic. He made the cookies with the idea that, if the cookie bandit came, he would be the one eating the cookies.

However, the State will counter that although Dan intended the cookies for the cookie bandit, his intent to harm would be transferred to the actual victim, Vic.

Therefore, Dan can be charged with first-degree murder.

## SECOND-DEGREE MURDER

Second-degree murder is all murder not found to be first-degree murder.

If the State cannot prove first-degree murder, it will request the court to give second degree.

## DEFENSES

### DEFENSE OF PROPERTY

One may use reasonable force to protect one's property.

Dan will argue that he knew that burglars were hitting homes when the residents were gone and therefore, he was merely trying to protect his home from would be thieves.

The State will counter, that by using poison, Dan used unreasonable force to protect his property. Poison would be considered deadly force and that is never appropriate for defending property.

This defense will fail.

### CRIME PREVENTION

One may use reasonable force to prevent a crime.

Dan will argue again that he knew that burglars were hitting homes when the residents were gone, therefore, he was merely trying to prevent a crime from occurring.

The State will counter that by using poison, Dan used unreasonable force to prevent the crime. Poison would be considered deadly force and that is never appropriate for crime prevention unless there is a serious felony actively being committed and lives are at stake.

#### MISTAKE OF LAW

Mistake can be a defense to a specific intent crime. As such, first-degree murder is a specific intent crime.

Dan will argue that he had been told by a police officer that he could use deadly force to prevent a burglary. Dan will argue that he made his determination based on that conversation.

The State will argue that deadly force is acceptable if there is an imminent threat to life and safety, but Dan wasn't even going to be home; therefore, there was no reason to use deadly force. He was protecting property, not himself.

#### INVOLUNTARY MANSLAUGHTER

An unintended killing without malice aforethought.

Dan will argue that his actions may have been criminally negligent, but that he never intended to kill Vic. He completely forgot that Jane came to clean his house, and then Jane often brought her son with her. His actions may have been wrong, but he never intended to kill Vic.

His request will fail. He may be able to get it reduced from first to second-degree murder, but this would be doubtful.

## BATTERY

Is the placing of force upon another with the intent to cause a harmful or offensive touching.

When Dan placed the poison in the cookies, he intended by his volitional act of placing the poison in the mixture, to cause a harmful touching. The poison would cause death or serious injury; therefore it would be offensive.

## STATE v. ANN

## CONSPIRACY

Defined and discussed supra

## PINKERTON'S RULE

A co-conspirator can be liable for all crimes committed in furtherance of the conspiracy.

Since Ann is a co-conspirator, and she was fully aware of what Dan's plans were, she can be charged with

Homicide - defined and discussed supra

Murder - defined and discussed supra

First Degree - defined and discussed supra

Second Degree - defined and discussed supra

Involuntary Manslaughter - defined and discussed supra.

Battery - defined and discussed supra.

## ACCOMPLICE

An accomplice is someone who aids or abets another to commit an unlawful act.

Ann can be charged as an accessory before the fact. By obtaining the cyanide for Dan to aid him in preparing the cookies, she gave aid before the act was done. She knew what he planned to do, and by giving aid showed her intent that the crime be committed.

As an accomplice, she can be liable for all foreseeable crimes that result from the unlawful act.

Modernly, she can only be found liable for the intended crimes that resulted.

## MISTAKE OF LAW

Mistake of law is never a defense to a crime.

Ann will argue that she tried to talk him out of it, but Dan had assured her that his act of poisoning the cookies was lawful because he had talked with a police officer. Even if it comes from a police officer if it is wrong, it is wrong.

Mistake of law would not be a valid defense.