

ASP – Criminal Law (Prof. Steinman)  
Fall 2005 - Session #2  
Santa Clara University School of Law  
Monday, 26 September 2005 3:00 – 4:45 PM

1. Introduction

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2. General Q&A re Law School, Crim and Steinman

3. Outlining 1<sup>st</sup> and 2d Degree Murder

- a. General Outlining Points
  - i. Why outline?
    - 1. Helps you to organize the material you've learnt
    - 2. Helps you approach problems in a structured manner
  - ii. Types of outlines
    - 1. Flow charts, Outlines based on problems
    - 2. What works for one person doesn't necessary work for others
- b. Initial Class Questions
  - i. What is murder? Where can one find the CA definition?
  - ii. Is there a difference between murder and homicide?
- c. Group Outlining
  - i. Group 1 Outlining 1<sup>st</sup> degree murder
    - 1. How many kinds of 1<sup>st</sup> degree murder are there?
    - 2. What are the basic requirements for most kinds of 1<sup>st</sup> degree murder?
    - 3. Why would you charge one kind of 1<sup>st</sup> degree murder over another?
    - 4. Does CA require something different than Common Law or the other states?
      - a. How is Anderson different from Common Law?
      - b. Does Anderson apply to all types of 1<sup>st</sup> degree murder in CA?

ii. Group 2 Outline 2d degree murder

1. How many kinds of 2d degree murder are there?
2. What are the basic requirements for most kinds of 2d degree murder?
3. Why would you charge 2d murder instead of 1<sup>st</sup> degree murder?
4. Does CA require something different than Common Law or the other states?

iii. Groups 1 and 2 write their outline on the board and explain how their type of murder works

4. Group Hypo

Mr. West was terminally ill patient. He had been in the San Jose Community General Hospital for several months and his condition was gradually deteriorating. Mr. West was connected to a machine that ensured that he received the proper amount of medication to minimize his pain. Mr. West's son Adam was a pharmacist at the hospital and would visit his father every evening around 6 PM to talk to his father. Adam would normally leave around 6:30 PM.

Last Friday Adam went to visit his father at 6 PM and found that his father was barely able to talk. After only a few minutes Adam left his father room crying. Several nurses saw him leave. At about 1 AM on Saturday morning, Nurse Ogawa was on her nightly rounds and bumped into Adam as he came running out of his father's room. She asked Adam what he was doing at the hospital in the middle of the night. Adam replied "Saying Goodbye" and ran off.

As per her routine, several hours later, Nurse Ogawa went into Mr. West's room and found that he had no pulse. The doctors were unable to revive him. When the machine that was responsible for giving Mr. West his medication was checked, the doctors found that the dosage was increased to 10 times the normal dosage. They also found that the change occurred at 12:50 AM. Such a large dosage would have been almost instantaneously fatal.

You are a deputy district attorney for Santa Clara County. Your boss (who told you to assume that the aforementioned facts are true) wants to know – based on these facts – what is the most serious homicide offense that has “realistically” been committed, how you would proceed in prosecuting that offense and what problems you would face in such a prosecution. Also, your boss wants an evaluation of other serious homicide or non-homicide charges you would pursue based on these facts. Please write a memorandum discussing and analyzing the issues posed by your boss’ request.

1. Preliminary Questions (Class)

- a. What does the question ask you to do?
- b. How does the question ask you to go about it?

2. DA Group

- a. What kind of murder would you charge Adam with?
- b. What are the reasons for picking one kind of murder over the other?

3. PD Group

- a. If Adam were charged with 1<sup>st</sup> degree murder what arguments would you make in order to get the charge reduced to 2d degree murder?
- b. If Adam were charged with 2d murder how would you argue that the requirements for 2d murder haven’t been met?

4. Common Questions/Suggestions for both groups

- a. What facts support your view?
- b. Are there any cases that support your view?
- c. What changes should we make to the outline to make this problem easier?