

ASP – Criminal Law (Prof. Steinman)
Fall 2005 - Session #3
Santa Clara University School of Law
Wednesday, 12 October 2005 4:30 – 6:00 PM

1. Introduction

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

- a. Don't Panic!
 - i. The midterm isn't as bad as you think it will be
 - ii. It will help you figure out what you need to work on for finals
- b. Don't forget IRAC!
 - i. Issue
 - 1. What are you going to charge?
 - 2. What are the problems?
 - ii. Rule – How will you show that Δ committed the charged offense?
 - iii. Analysis
 - 1. Basically a discussion of the problems you identified above
 - 2. One approach
 - a. What are Δ 's arguments? What creates the problem?
 - b. What is the DA's rebuttal?
 - iv. Conclusion – Is the DA going to be able to overcome the problems?

3. Outlining 1st, 2d Degree Felony Murder, Taylor Murder and Manslaughter

- a. Initial Questions
 - i. What murder requirement is the felony in felony murder being used to show?

- ii. What is the difference between murder and manslaughter?
 - b. Group 1 – Outline 1st Degree Felony Murder and Taylor Murder
 - i. What felonies qualify for 1st degree felony murder?
 - ii. What felonies qualify for Taylor murder?
 - iii. Are there any additional requirements for Taylor murder?
 - c. Group 2 – Outline 2d Degree Felony Murder and Manslaughter
 - i. What felonies qualify for 2d degree felony murder?
 - ii. What are the requirements for voluntary manslaughter?
 - iii. What are the requirements for involuntary manslaughter?
 - iv. Under what circumstances would you argue for manslaughter instead of a murder charge?
 - d. Groups 1 and 2 write their outline on the board and explain how each type of homicide works
4. Questions re the practice midterm?
5. Exam Question – Both Groups are DA this time
- a. Things to keep in mind when answering the question
 - i. What does the question ask you to do?
 - ii. How does the question ask you to go about it?
 - b. What kind of murder would you charge?
 - i. What are the reasons for picking one kind of murder over the other?
 - ii. What facts support your view?
 - iii. What facts work against your view?
 - iv. Are there any cases that support your view?
 - c. What changes should we make to the outline to make this problem easier?

Dan Qualude is a 20-year-old student at the University of Northern California. He met Sorta Younger at a local fraternity party. Sorta told Qualude she was a high school senior and that she was 19 years old; in fact, Younger was 15 and a high school sophomore.

After the party, Qualude and Younger went for a drive in his car. After snorting several lines of his cocaine, they had consensual sex and spent the night together in his dormitory room.

When they woke up the next day, they again snorted some cocaine. Younger kept asking Qualude for even more cocaine, but he said he didn't have any. She told him to go and get some. When he said he wouldn't, Younger told him that unless he got her a week's supply of cocaine, she would call the police and tell them that he had seduced her with the drugs and that she was 15 years old.

Qualude said he became frightened because he thought the age of consent was 16. Though he believed that Younger was older than 15 (he still thought she was a high school senior), he was now not sure how old she was. Terrified that Younger could destroy his planned law career, Qualude decided he needed to “delicately” handle this situation. He told Younger that he would bring her some drugs. He then went to his drug dealer and asked the dealer for some highly concentrated doses of cocaine. The dealer asked Qualude why he wanted such highly concentrated doses. Qualude said he wanted to scare a friend out of using cocaine by causing an overdose. The dealer warned him that an overdose could be fatal. Qualude responded: "Hey, are you my mother or my dealer? Don't preach to me, just give me what I need." The dealer sold Qualude the highly concentrated doses of cocaine at a premium price and said, "Don't blame me if anything goes wrong."

In the meantime, back in Qualude's dorm room, Younger was shooting herself up with heroin; Qualude was not aware that Younger was into heroin. When Qualude returned to the room, he gave Younger the cocaine after exacting a promise from her that she could never tell anyone where she got it or about their sexual encounter. He also told her she could not use the cocaine in his room.

Younger left the campus and went to a movie, where she snorted the concentrated cocaine. She immediately suffered a seizure and was taken to a hospital. In the emergency ward,

the attending doctor saw infected needle marks on Younger's arm. She was treated for multiple drug overdose, but died three days later without recovering consciousness. An autopsy revealed that Younger died of the combined effects of the heroin, the cocaine, and infection. She would probably not have died from the cocaine alone.

You are a deputy district attorney for Santa Clara County. Your boss (who told you to assume the aforementioned facts are true) wants to know what “realistically” is the most serious homicide offense that Qualude likely committed, how you would proceed in prosecuting that offense, and what problems you would face in such a prosecution. Your boss also 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. For your assistance, the California homicide statutes are set forth below. In addition, the following statutes (assume they are law in your jurisdiction) may or may not be helpful in writing the memorandum.

Cal. Penal Code Extracts

Cal. Penal Code § 55 – Unlawful Sexual Intercourse

Unlawful sexual intercourse is an act of sexual intercourse where the female is under the age of 18 years.

Cal. Penal Code § 72 – Cocaine

- (a) Every person who transports, imports, sells, furnishes, distributes, gives away, or administers cocaine in any amount shall suffer confinement in the state prison. for a term of 10 years.
- (b) Every person who transports, imports, sells, furnishes, distributes, gives away, or administers more than four grams of cocaine shall suffer confinement in the state prison for a term of 20 years.

Cal. Penal Code § 187 - Murder Defined

- (a) Murder is the unlawful killing of a human being, or a fetus with malice aforethought...

Cal. Penal Code § 188 - Malice defined

Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

When it is shown that the killing resulted from the intentional doing of an act with express or implied malice as defined above, no other mental state need be shown to establish the mental state of malice aforethought. Neither an awareness of the obligation to act within the general body of laws regulating society nor acting despite such awareness is included within the definition of malice.

Cal. Penal Code § 189 - Degrees of murder

All murder which is perpetrated by means of a destructive device or explosive, a weapon of mass destruction, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 206 [Torture], 286 [Sodomy], 288 [Lewd or lascivious acts involving children], 288a [Oral copulation], or 289 [Sexual penetration by foreign object], or any murder which is perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death, is murder of the first degree. All other kinds of murders are of the second degree...

To prove the killing was "deliberate and premeditated," it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or her act.

Cal. Penal Code § 190 - Punishment for murder

- (a) Every person guilty of murder in the first degree shall be punished by death, imprisonment in

the state prison for life without the possibility of parole, or imprisonment in the state prison for a term of 25 years to life...

[E]very person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 15 years to life.

Cal. Penal Code § 192 - Manslaughter

Manslaughter is the unlawful killing of a human being without malice. It is of three kinds:

- (a) Voluntary - upon a sudden quarrel or heat of passion.
- (b) Involuntary - in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection. This subdivision shall not apply to acts committed in the driving of a vehicle.
- (c) Vehicular - ...