

ASP – Criminal Law (Prof. Steinman)
Fall 2005 - Session #6
Santa Clara University School of Law
Monday, 21 November 2005 3:00 – 4:45 PM

1. Introduction

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

- a. Approaches to summarizing the class
 - i. Outline each major topic covered since the midterm (Attempt, Accomplice, Conspiracy and Defenses) in detail
 - ii. Make an “attack” sheet for each major topic area – Attack sheet is a short summary of what you need to show for each charge or defense.
- b. Ideas for studying for the final
 - i. Try to write up a practice test and have Steinman look it over
 - ii. Try to use Steinman’s “answers” to fill-in gaps in your outline
 - iii. If something doesn’t look/sound right in one of the “answers” it is probably b/c the law has changed

3. Defense Chart

- a. Idea is to make a chart that identifies the elements that Δ needs to show for each defense
- b. Defenses
 - i. Self Defense
 - 1. What does Δ need to show?
 - 2. Is this a complete defense?
 - 3. Is there a duty to retreat?

4. Does Δ have an absolute right to claim self defense?
 - ii. Imperfect self defense
 1. How is this different than self defense?
 2. Is this a complete defense?
 - iii. Defense of Others
 1. What does Δ need to show?
 2. Is there imperfect self defense of others?
 - iv. Defense of Property
 1. What does Δ need to show?
 2. What kind of force can you use?
 3. Is there a duty to retreat?
 - v. Necessity
 1. What does Δ need to show?
 - vi. Duress
 1. What does Δ need to show?
 2. How is this different than necessity?
 - vii. Diminished Capacity
 1. What does Δ need to show?
 2. Is this available in CA?
4. Self Defense Hypo - 2004 Exam Question #2

Sam Malone owns and operates a tavern – and too frequently samples his own wares. Malone's tavern is located near the San Francisco Hall of Justice and is a typical tavern in that area: smoke filled, alcoholically flooded, loud voices, turmoil, and confusion. Delia Ware is employed in the tavern as a bartender.

Ware and Malone are also good friends and often drink together – and this what they had been doing on the evening of December 4. During that evening, Ware mistakenly gave a customer, Warren Peace, change for a five-dollar bill thinking that it was a twenty-dollar bill. A few minutes later Ware realized her mistake and told Malone about it. She asked Malone to tend the bar for a few minutes while she looked for Peace and recovered the money.

Ware found Peace in the crowd and asked for the \$15. Peace replied, “Tough luck. I didn't count it. If you can't count, I'm not going to.” Ware then took Peace by the arm to pull him over to the bar, but Peace resisted and pushed Ware away. Ware swung a punch at Peace. Peace seized a chair to defend himself. Ware swung another punch, missed, lurched forward, and fell.

By this time, Malone recognized that there was a fracas – He took a handgun from behind the counter of the bar and hurried to the scene of the action, where he saw Peace with the chair in his hand standing over Ware. Malone shouted. “I'll teach you to beat up my friend, you rotten bastard” and struck at Peace, flailing him furiously with the gun. Peace was hit on the head by the barrel of the gun and concussed. Meanwhile, bystanders had intervened to separate the men; in the struggle one of the bystanders, Adam Baum, was wounded in the hand by a shot accidentally discharged from the gun.

You are a defense attorney in the firm of Dewey, Cheatum, and Howe. Your boss, Huey Dewey, has told you that Malone and Peace each wish to hire the firm, but the firm naturally can only represent one of the two men. Your boss (who told you to assume that the aforementioned facts are true) wants to know - based on these facts - what are the most serious charges that can be filed against Malone and Peace respectively Your boss also asks you to anticipate the problems that the district attorney will face in prosecuting these charges, how the prosecutor will overcome these problems, any defenses that you would expect to raise to these charges, and the likelihood of any of these defenses succeeding. Please write an essay that discusses and analyzes the issues posed by your boss' request.