

## **Criminal Exam 14**

Bessie loved chocolate. She couldn't resist it. She had to have it. It spoke to her.

Bessie lurked outside the chocolate factory. She wanted that chocolate. She was going to get some. Nothing would stop her.

Bessie calmly walked into the chocolate factory and picked up 24 boxes of chocolate. Yes one for each hour of the day. That should do nicely. She walked to the counter and wrote a check for the chocolate even though she knew the check would bounce. As she was walking out of the store she was so anxious to get outside and start eating her chocolate that she shoved one of the factory workers, Bob, into a giant vat of chocolate and killed him.

What common law crimes is Bessie guilty of? What are her defenses?

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## **Example Answer:**

### False pretenses

Is Bessie guilty of the crime of false pretenses?

False pretenses is knowingly falsifying or concealing a material fact to fraudulently induce another to pass or receive title to property. False pretenses is a specific intent crime requiring an intent to defraud.

Here Bessie gave the clerk a check to pay for her chocolate knowing that the check would bounce. This was the concealment of a material fact to fraudulently induce the clerk to let Bessie purchase the chocolate.

Bessie is guilty of the crime of false pretenses.

### Battery

Is Bessie guilty of the crime of battery?

Battery is an unlawful application of force to the person of another that results in physical harm or an offensive touching. Battery is a general intent crime requiring only an intent for the force, not the physical harm or offensive touching.

Here, Bessie shoved one of the workers into a vat of chocolate. The shoving was an unlawful application of force which resulted in an unlawful touching, namely Bob falling into the vat of chocolate.

### Murder

Is Bessie guilty of the crime of Murder?

Murder is the unlawful killing of a person with malice aforethought. Murder is a general intent crime requiring only "malice aforethought" which means either an intent to kill, an intent to cause serious bodily harm, or an intent to commit a dangerous felony.

Here Bessie shoved Bob. While this did result in the death of Bob, there is nothing in the facts to indicate that Bessie had the requisite malice aforethought. Bessie did not intend to kill Bob, nor does it appear she intended to cause him serious bodily harm. Rather Bessie simply wanted to get outside so she could eat her 24 boxes of chocolate.

Bessie is not guilty of the crime of murder.

### Manslaughter (Voluntary)

Is Bessie guilty of the crime of Voluntary Manslaughter?

Voluntary Manslaughter is the unlawful killing of a person committed in the heat of passion. The mental state required for voluntary manslaughter, i.e. the heat of passion, requires all four of the following: the defendant was in a situation where a reasonable person would lose control; the defendant actually did lose control; There was not enough time for a reasonable person to cool off before the killing; and the defendant did not cool off before the killing.

Here, while Bessie did kill Bob she was not in a situation where a reasonable person would lose control. While most people like chocolate, a reasonable person is not so obsessed with chocolate that they need a box for every hour of the day or is willing to pass bad checks to get it. Bessie does not meet the required mens rea to be guilty of the crime of voluntary manslaughter.

Bessie is not guilty of the crime of voluntary manslaughter.

### Manslaughter (Involuntary)

Is Bessie guilty of the crime of Involuntary Manslaughter?

Involuntary Manslaughter is the unlawful killing of a person through gross negligence or during the commission of a misdemeanor. Involuntary manslaughter is a general intent crime requiring only an intent to do the negligent act or misdemeanor.

Here Bessie killed Bob during the commission of two misdemeanors. Bessie was both taking the 24 boxes of chocolate under false pretenses and committing a battery against Bob. Bessie therefore unlawfully killed Bob during the commission of a misdemeanor.

Bessie is guilty of involuntary manslaughter.

### Insanity Defense

Can Bessie use the defense of mental illness for the crimes of false pretenses, battery, or involuntary manslaughter?

In order use the defense of mental illness the defendant must show he or she was insane at the time the act was committed.

There are four ways in which Bessie might be considered insane.

1. The M'Naghten rule states that a defense of insanity is proper where the defendant suffered a mental disease where he did not know the nature and quality of his act or he did not know his act was wrong. Here, while Bessie is clearly obsessed with chocolate, it would be a stretch to find that she did not know the nature of her actions or that her actions were wrong. The facts indicate she passed a bad check knowing it would bounce and purposely pushed Bob into a vat of chocolate so she could get outside and start eating. Bessie would not be insane under the M'Naghten rule.

2. Under the federal standard, a defense of insanity is proper where the defendant, as a result of a severe mental disease, was unable to appreciate the nature and quality or the wrongfulness of his acts. Again, there is no indication that Bessie did not know what she was doing or did not know what she was doing was wrong. Bessie would not be insane under the federal standard.

3. Under the Model Penal Code Standard a defense of insanity is proper where the defendant, as a result of a severe mental disease or defect, lacks substantial capacity to either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law. Here there is some indication that Bessie suffers from a severe mental disease. Specifically she is obsessed with chocolate to the point that the chocolate "speaks to her." This obsession may qualify as a severe mental disease. There is also some indication under the facts that Bessie must write bad checks to get the chocolate because she is so obsessed with it. However, had Bessie had money in her checking account she probably would have paid for the chocolate with a good check which is evidence that she *can* conform her conduct to the requirements of the law.

On balance, however, the fact that the chocolate "speaks to her" and the fact that she used a bad check to pay for chocolate and shoved someone out of the way while getting the chocolate will be enough to find Bessie insane under the Model Penal Code standard. Bessie suffers from a severe mental disease (chocolate speaks to her) and she is unable to conform her actions to the requirements of the law because she must have chocolate. Bessie is probably insane under the Model Penal Code standard.

4. The irresistible impulse standard states that a defense of insanity is proper where the defendant suffered a mental disease where he was unable to control his conduct and acted under an irresistible impulse. As explained above, Bessie has some type of mental disease. As also explained above Bessie is unable to control this mental disease. Bessie doing anything and everything to get a hold of chocolate likely makes her insane under the irresistible impulse standard. Bessie suffers from a mental disease (chocolate speaks to her) and she can not control her conduct (passing bad checks to get chocolate).

Under both the model penal code standard and the irresistible impulse standard, Bessie may be able to use the defense of insanity as defenses for the crimes of false pretenses, battery or involuntary manslaughter.