

Criminal Exam 3

Jimmy C. had an awful thought. A terrible dastardly thought. If he could just kill Richard Rich, the town tycoon and take on Richard Rich's identity and forge checks to an offshore bank account he could run away with Mr. Rich's money. It was a perfectly dim witted plan – but he needed some help. So Jimmy C. called up his good buddy Bobby.

"Hey Bobby," Jimmy C. said, "I want to kill Richard Rich, can you help me out?"

"Sure," said Bobby, "I can get you a big barrel of gasoline which you can pour all over his house, light it on fire, and then burn Mr. Rich and his house to smithereens."

"The perfect crime," said Jimmy C. "The perfect crime," he repeated.

"Are you OK?" asked Bobby.

Jimmy C. just laughed, "Ha Ha Ha!"

Later that night Bobby brought over the barrel of gasoline.

"Here you go," said Bobby, "good luck with your murder thing and all."

Around midnight Jimmy C. took the barrel of gasoline and went over to Mr. Rich's house. He broke a window and crawled inside. He then began pouring the gasoline all over the house. In one room Jimmy C. spotted a rare painting on the wall and took it. He lit a couch on fire to get the blaze started, but the fire never burned anything besides the couch. Jimmy C. ran back to Bobby's house laughing all the way.

"Ha Ha Ha!" he screamed.

He went back to Bobby's house and told him that Mr. Rich's house was burning and Mr. Rich would be soon be dead.

"Mr. Rich isn't at the house," said Bobby, "and the house is not burning. Oh, and by the way, you're under arrest."

"What?" Said Jimmy C.

"First of all, I'm a cop," said Bobby, "You've known me for years, you know I'm a cop!"

"Second, the barrel I gave you was full of water not gasoline. Third, when I learned of your plan I informed Mr. Rich who left his house immediately."

“Ha Ha Ha!” Jimmy C. screamed, “now that’s funny. I didn’t really want to kill Mr. Rich or burn his house down. I renounce my former plans,” Jimmy C. shouted.

What common law crimes can Jimmy C. be guilty of? What defenses does he have?

Example Answer:

Burglary

Is Jimmy C. guilty of burglary?

Burglary is the breaking and entering of the home of another at night with the intent to commit a felony inside. Burglary is a specific intent crime requiring that the intent to actually commit a felony inside the home.

Here Jimmy C. broke a window and entered Mr. Rich's home with the intent of burning the home and killing Mr. Rich. The breaking of the window is a "breaking"; the entering of the home was an "entering"; the building was the home of Mr. Rich, not Jimmy C.'s home; these actions were taken at night around midnight; and Jimmy C. intended to commit felonies inside, namely arson and murder.

Jimmy C. is guilty of burglary.

Larceny

Is Jimmy C. be guilty of larceny?

Larceny is the taking and carrying away of personal property of another without consent and with intent to steal. Larceny is a specific intent crime requiring the intent to steal a particular item.

Here Jimmy C. took a rare painting from Mr. Rich's house and left with it. The painting was person property of Mr. Rich. There is no indication in the facts that Mr. Rich gave Jimmy C. permission to take the painting, and Jimmy C. presumably intended to steal the item, although no facts specifically indicate this intent.

Jimmy C. is guilty of Larceny.

Arson

Can Jimmy C. be guilty of Arson?

Arson is the malicious or reckless burning of the dwelling of another. Arson is a general intent crime requiring either malice or recklessness.

Here Jimmy C. lit a couch on fire and the fire did not spread beyond the couch. Jimmy C. did act with recklessness in setting the couch on fire and pouring what

he thought was gasoline all over the house. Under the facts given, however, no portion of Mr. Rich's house caught fire, only the couch did.

Under these facts, Jimmy C. would not be guilty of common law arson.

Attempted Arson

Can Jimmy C. be guilty of attempted Arson?

As stated above, Arson is the malicious or reckless burning of the dwelling of another. An attempted crime is the commission of an overt act which is a substantial step in the completion of the crime.

Here Jimmy C. poured what he believed was gasoline all over Mr. Rich's house and lit the couch on fire. These are both substantial steps in the completion of a reckless burning of the dwelling of another.

Defenses: Jimmy C. may attempt to argue impossibility. Because he poured water all over the house and not gasoline, there was very little chance the house would burn. This defense will likely fail. Although it was unlikely – or even impossible—that the house would burn, impossibility is typically not a defense to an attempted crime and would not be a defense under these facts.

Jimmy C. may also attempt to argue renunciation. Renunciation is the voluntary abandonment of an attempt to commit a crime. Here Jimmy C. did not renounce the crime until after he was caught. This is not a voluntary renunciation as police were present and he was under arrest at the time.

Jimmy C. can be guilty of attempted arson.

Attempted Murder

Can Jimmy C. be guilty of attempted 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 felony.

As stated above, an attempted crime is the commission of an overt act which is a substantial step in the completion of the crime.

Here Jimmy C. poured what he believed was gasoline all over Mr. Rich's house and lit the couch on fire. He was specifically attempting to kill Mr. Rich by these actions. These actions are both substantial steps in the commission of murder.

Defenses: Jimmy C. may attempt to argue impossibility. Because Mr. Rich was not at home at the time he attempt to set the house on fire, Mr. Rich could not have been killed. This defense will likely fail. Although it impossible that Mr. Rich could have been killed, as explained above, impossibility is typically not a defense to an attempted crime and would not be a defense under these facts.

Jimmy C. may also attempt to argue renunciation. As stated above, renunciation is the voluntary abandonment of an attempt to commit a crime. Here Jimmy C. did not renounce the crime until after he was caught. This is not a voluntary renunciation as police were present and he was under arrest at the time.

Jimmy C. can be guilty of attempted murder.

Conspiracy to commit murder or arson

Can Jimmy C. be guilty of conspiracy to commit murder or arson?

A conspiracy is an agreement between two or more persons to do an unlawful act. The agreement can be through words or actions alone. In addition, assisting with preparations to commit the unlawful act are enough for a conspiracy. Conspiracy is a specific intent crime, the co-conspirators must have the intent to complete the unlawful act.

Here, Jimmy C. asked Bobby to help him set Mr. Rich's house on fire and kill him and Bobby apparently agreed. Unknown to Jimmy C., however, Bobby had no intention of assisting Jimmy C. as Bobby was a police officer. Under the common law, a person who conspires with an undercover agent is not guilty of conspiracy since there is no agreement with the undercover agent. However, under the model penal code conspiring with an undercover agent is conspiracy.

As this question asks specifically about common law crimes, Jimmy C. would not be guilty of conspiracy.

Attempted forgery

Can Jimmy C. be guilty of attempted forgery?

Forgery is the material altering a document with intent to defraud. Forgery is a specific intent crime requiring an intent to defraud. As stated above, an attempted crime is the commission of an overt act which is a substantial step in the completion of the crime.

Here Jimmy C. merely thought about taking on Mr. Rich's identity and forging checks. Thoughts alone never rise to the actus reus required for the

commission of a crime. Although Jimmy C. did attempt to kill Mr. Rich, Jimmy C. took no substantial steps toward materially altering a document as would be required for attempted forgery.

Jimmy C. is likely not guilty of attempted forgery.