Doug & Tom: Lawn Party

ANSWER TO CRIMINAL LAW ESSAY TWO

1. First degree murder.

In order to establish first degree murder, it must first be established that Doug is guilty of murder. Murder requires a finding that the defendant has committed a homicide with malice. A homicide is defined as the killing of a human by the defendant. Here, Doug shot and killed Tom. There is no doubt that Doug has committed a homicide. However, the bigger problem is whether Doug acted with malice. Malice is composed of two components: a positive component (needed to establish malice) and a negative component (which will negate malice). The positive component exists if any of four elements are present: intent to kill, intent to inflict serious bodily injury, depraved heart, or felony murder. If any of these four elements are established and none of the negative elements are present (i.e., justification, excuse or mitigation), then the homicide is committed with malice. The crime will be murder and may be first or second degree murder (see below).

A. Malice.

1. Intent to kill. Doug shot and killed Tom. The use of a deadly weapon (pistol) creates an inference that Doug intended to kill Tom. The inference is rebuttable, but there are no facts to support the notion that Doug intended anything less serious. In fact, Doug stated that he "shot Tom in self defense" which suggests that Doug did intend to kill Tom when he shot him.

Malice: Negative component. If Doug is successful in arguing that the homicide was justified or excused, then he will have no criminal liability for Tom’s death. If the negative component of mitigation is present, then Doug will be found guilty of voluntary manslaughter.

B. Justification

a. Self-defense. An individual may kill to defend against the victim’s deadly attack so long as the victim’s deadly attack is wrongful and the defendant’s response is reasonable. The facts indicate that Tom was angered by Doug’s battery of Tom’s girlfriend (Doug threw a bottle and hit her leg). Under these facts, Tom’s attack was not deadly, he only shook his fist at Doug. Moreover, Doug’s response was not reasonable. Doug could have protected himself without killing Tom. Doug could have simply pointed the weapon at Tom and told Tom to stop.

b. Defense of habitation. In some jurisdictions, the defendant may kill in defense of habitation. In these states, Doug would be justified in using deadly force against Tom because Tom was threatening injury (non-deadly is sufficient) to an occupant (Doug) of Doug’s home. If the defense of habitation argument succeeds, Doug will have no criminal liability for Tom’s death.

2. Mitigation.

a. Diminished capacity. In the vast majority of jurisdictions, Doug’s voluntary intoxication is not source of mitigation which will reduce the charge to voluntary manslaughter. However, Doug may have been too intoxicated to form the
specific intent required for intent to kill murder. If so, Doug will be guilty of depraved heart murder for pointing a loaded weapon at Tom while intoxicated. This argument will not prevent Doug from being found guilty of murder, but can reduce the charge from first to second degree. (See below)

b. Provocation. A defendant who commits a homicide as a reasonable response to adequate provocation will only be guilty of voluntary manslaughter. Arguably, Tom's behavior (e.g., breaking down the door, shaking his fist) provoked Doug's response. However, the law requires adequate provocation (an act which would cause a reasonable person to become enraged enough to kill). Tom's conduct is probably not sufficient to provoke a deadly response from a reasonable person.

3. Degree. First degree murder will be charged if the prosecution can demonstrate that Doug’s intent to kill was premeditated and deliberate. It is unlikely that Doug will be guilty of this crime because of his intoxication. Doug was probably drunk enough to be unable to premeditate (turn the idea over in his mind) or deliberate (consider the idea with a cool mind), especially when Tom burst in upon him so suddenly. If Doug’s "heavy drinking" prevented him from forming the specific intent to kill or from premeditating and deliberating, the charge will be second degree murder.

II. Other lesser included crimes.

Doug may be found guilty of battery upon Tom and Tom's girlfriend--Doug shot Tom and hit his girlfriend with a beer bottle. These acts of force applied to their persons through, at least, Doug's criminal negligence constitute battery. In addition, if Tom or his girlfriend were apprehensive of the battery, then Tom is guilty of assault.