Express Co.

ANSWER CRIMINAL LAW ESSAY ONE

[Notice how the interrogatory not only points you towards a party-by-party organization, but also directs your analysis to a specific theory, i.e., first-degree murder. You could have also chosen to organize your answer on a transaction-by-transaction basis, i.e., (1) C and D’s liability for the death of A, (2) C and D’s liability for the death of B.]

I. C’s liability for first-degree murder

A. Murder of A.

In order to determine if C is guilty of first-degree murder it must first be established that C is guilty of murder at all. To sustain a murder conviction, the prosecution must establish that C committed a homicide with malice.

A homicide is defined as the killing of a human being by the defendant. Here, C shot and killed A so a homicide has occurred. The malice required to establish murder exists if the defendant acted with the intent to kill the victim or cause serious bodily injury, acted with a depraved heart, or killed during the commission of a dangerous felony. However, first-degree murder may only be established if the malice requirement is established via intent to kill or under the felony murder rule. Malice can be negated by facts which justify, excuse or mitigate the crime, but since C was committing a robbery when the homicide occurred, there are no facts sufficient to negate malice.

1. Intent to kill. Under the deadly weapon doctrine, if a defendant kills while using a deadly weapon, there is a presumption that the defendant intended to kill the victim. C used a gun and thus we may presume he intended to kill A.

   a. Premeditated and deliberate? In states that recognize degrees of murder, a murder committed with premeditation and deliberation is first-degree murder. Premeditation means that the idea of killing was turned over in the defendant’s mind or given a second thought. Deliberation means that the defendant was acting calmly as opposed to impulsively or in sudden anger. The facts tell us that “C [was] infuriated at A’s stupidity, . . . cursed him, drew his gun and killed A.” C’s anger is certainly not sufficient to mitigate the crime to voluntary manslaughter. Nevertheless, the anger may establish that the killing was not given a second thought, but was sudden and impulsive and thus was not with the premeditation and deliberation required for first-degree murder.

2. Felony murder rule. The felony murder rule applies when a homicide has been committed during the perpetration of a dangerous felony. When the felony is robbery, the murder is usually classified as first-degree murder in those states that recognize degrees of murder.

   The major problem is whether the murder was committed during the perpetration of the robbery. The zone of perpetration begins when the felons have gone far enough to incur guilt for an attempt which has clearly occurred here: B and C, by drawing their guns and ordering the cashier to unlock the vault, certainly went beyond the zone of preparation and into the zone of perpetration for the crime of
robbery. But, the homicide occurred in the vicinity of the get-away car which was somewhat removed from the actual scene of the attempted robbery. Some jurisdictions hold that the felony murder rule only applies to homicides occurring at the scene of the felony. But under the better view, the zone of perpetration continues after the felon leaves the scene until reaching a place of seeming safety. Thus, under this view, the felony murder rule would apply and C would be guilty of first-degree murder.

B. Murder of B.

B was not killed by C; he was killed by one of the victims of the attempted robbery, i.e., the cashier. Under a strict application of the felony murder rule, however, C would still be liable for first-degree murder because a homicide has occurred during the perpetration of a dangerous felony. (This analysis assumes, as discussed above in Paragraph I.A.2 that the zone of perpetration continues during flight and is not limited to the actual scene of the crime.)

The modern trend, however, restricts the application of the felony murder rule where the homicide is by the police, a victim or a bystander, and is justified or excused. Here the cashier killed B while he was attempting to escape from the scene of an attempted robbery. Although no robbery has been committed, there has been an assault with a deadly weapon and the cashier’s killing is probably justified under the privilege to use deadly force to apprehend a fleeing felon. Thus, under the modern trend, C is probably not vicariously liable for B’s death under the felony murder rule.

II. D’s Liability

A. For A’s death.

A wasn’t killed by D; he was killed by C. Thus, D’s conviction will only stand if he is vicariously liable for the killing of A.

The killing was not in furtherance of the conspiracy to rob Express Co. The killing of a policeman or a victim might be a natural and probable consequence of a robbery, but the intentional killing of one co-felon by another certainly is not.

Nevertheless, a homicide has occurred during the attempted perpetration of dangerous felony. (See Paragraph I.A.2. for a discussion of the zone of perpetration problem.) And under a strict application of the felony murder rule, D is vicariously liable for C’s killing of A. The major problem is whether the modern trend, which refuses to extend vicarious liability to homicides which are justified or excused, will apply here. Unlike the cashier’s killing of B discussed in Paragraph I.B., C’s killing of A was neither justified nor excused. Thus, D will be vicariously liable for A’s death unless the modern trend regarding vicarious liability under the felony murder rule is made the same as for conspiracy, i.e., that vicarious liability extends only to homicides which are in furtherance of a natural and probable consequence of the target felony.

B. For B’s death.

D’s liability for B’s death involves the same problems regarding C’s liability under the felony murder rule and are covered in Paragraph I.B. [There is no need to repeat the analysis of any issue if there are no new rules, elements of rules or facts warranting additional discussion.]