

1)

### **1) Crimes and Defenses of Deborah (D)**

#### **Trespass To Land**

To be guilty of trespass of land, the defendant must have intentionally trespassed on another's land (mistake is not a defense), there is causation, and the the trespasser had caused damage the land.

#### ***Intentional***

In terms of intent trespass to land is considered to be a general intent crime. The defendant need only mere general intent instead of specific intent to commit the crime before entering the property.

Here, D found a run-dwon house with an attached garage that had a door connecting to the house. Though D thought that nobody was in the home, abandonment is not a defense. Further, there are no mistake present to make it seem that D mistakenly (which would not be a defense, regardless) entered the property. She intentionally did so to escape the blistering cold weather (which could be a defense for necessity, discussed later below).

Thus, there was intent to enter the land.

#### ***Causation***

Causation is proved by both actual and proximate causation.

#### ***Actual Causation***

The damage to the property would not have happen but for defendant's conduct.

Here, the damage to the property of the broken window, the house being engulfed with the flame and Stuart (S) dying would not have happened, but for D trespassing the land.

Thus, there are actual causation.

#### ***Proximate Causation***

For proximate causation, it must be foreseeable that defendant's conduct would be foreseeably cause harm to the proeprty and the residents of the home.

Here, it could be arguably foreseeable that D would have foreseen that someone would be living in the home and by her causing a fire while unattended would cause a flame to burn the entire home down. It will be difficult for D any superseding causes here as the facts do not tell or permit.

#### ***Damages***

Damages must be actual (person and property), not purely economical.

---

---

There are obvious damages here as D did not damage the window by entering, she burned the home, and killed S in the process.

Thus, there are damages.

For all discussed above, D could be criminally liable for trespass to land as well as the damages she caused to the property.

***Defense: Public Necessity***

Public necessity is a defense to trespass to land if there are actual dangers imposed on an individual(s) if there has been a natural disaster or unexpected events that would force the individual(s) to trespass on the land for their safety in order to prevent immediate death or harm. Even though there is a necessity, the person trespassing could still be liable of damages caused.

Here, D being transient and homeless without money, there is a strong argument that her trespass was necessary to avoid the blistering cold conditions imposed on her. The temperature was below freezing and continuing to drop. Due to the fact D had inherently believed that she would have died (as she possibly could have due to hypothermia), D has a valid defense to seek shelter in the home. However, because a public necessity exists she is on free of damages (previously mentioned above) that she caused while trespassing on the property.

Thus, for discussed above, there was a public necessity for D to trespass on the land, but she still liable for the damages she caused on the property and possibly criminally liable for the death of S and the burning of the home (discussed below).

**Arson**

In order to be guilty of arson, the defendant must have malice aforethought, in other terms, reckless disregard, burning of another person's dwelling, and the burning must be severe, not just simply charred.

**Malice Aforethought**

Here, its debatable whether or not D had the malice aforethought of wanting the burning the house or not. For the facts it indicates that the D decided to go into the garage, take some of the wood, and build a fire outside the garage to keep herself warm. The facts would not indicate that she had the malice aforethought to burn the home, rather she just started the fire to keep her self-warm. Further, the facts indicate that the flame was caused by a spark and oil residue on the floor. The facts do not indicate whether the oil was placed by D or it was previously there by a vehicle. Regardless, because D lacked malice of forethought, it would be very unlikely she should be convicted of arson.

Thus, because D lacked malice of forethought, it would be very unlikely she should be convicted of arson, however, she could meet the other elements down below.

**Severe Burning**

---

There is clear severe burning present here as the entire home was engulfed in flames. Thus, the element of severe burning is met.

### **Of Another's Dwelling**

Under common law, arson could be only committed on another person's dwelling. However under model penal code (MPC), the extension of this has extended to any structure and including a person's own structure and dwelling.

Here, because the home is another person's dwelling that is not D's, as she is homeless, this requirement is met regardless if the jurisdiction followed the common law or MPC approach.

Thus, D has committed arson (assuming she had malice aforethought) of another's dwelling.

### **Defense: Abandonment**

Abandonment of property is not a defense for arson even if the person reasonably believed that no-one was in the home.

Here, D may argue that she reasonably believed that the home was unoccupied which would not be valid defense of arson. However, as previously discussed, due to the facts she lacked malice aforethought, she would not be convicted of arson.

Thus, for all discussed above and applicable defenses, D would not be convicted of arson as she did not have the malice aforethought requirement to burn the home down.

### **Depraved Heart Murder—Stuart (S)**

For depraved heart murder, there must be high reckless disregard for human life that would cause great bodily injury and killing of another.

Here, there is argument for D to be convicted of depraved heart murder as her actions of burning the home could be viewed as reckless disregard of human life but her acts of starting a fire would not fall under the view of extreme negligence which is required for Depraved Heart. Thus, it is unlikely that D would be convicted for this murder.

Thus, D would not be guilty of depraved heart murder

### **Felony Murder (Burglary, Arson, and Larceny)**

In order to be guilty of felony murder, the murder must have been in the commission of an inherently dangerous felony (burglary, rape, robbery, arson, and kidnapping).

Though there is an argument that D may have committed arson, there are not facts to indicate that she had malice aforethought to do so. However there is an argument that D did commit burglary as she had the specific intent to enter the home for the sole purpose of committing larceny (trespassory taking of another's property with the intent to permanently deprive) of the wood. Because of her criminal act of burglary of entering into the home of another, at night, to commit the felony of larceny, she could be convicted for felony murder as S died during the commission of the burglary felony.

---

Thus, for all said D could be convicted for felony murder.

### **Involuntary Manslaughter**

D could raise the defense of involuntary manslaughter as her criminal negligence of trespass of land caused the unintentional death of S.

Thus, this could be a valid defense to bring D's felony murder charge down to involuntary manslaughter.

All in all for all discussed above, its most likely that D could charged with trespass to land, burglary (her larceny of the wood will merge into burglary), and involuntary manslaughter.

## **2) Suppression of Deborah's (D) Statement**

### **5th Amendment (Amm.)**

The 5th Amm. protects individuals from stating self-incriminating statements to government actors. Police officers are required to the give Miranda Warnings to suspects of a crime to safe ground protect their constitutional rights from stating any self-incriminating statements. These warnings are required if the suspect is in custody, meaning they do not feel free to leave, and there is an interrogation from the police officer.

### ***Government Actor***

In order to claim the right of the 5th Amm., it must be violated by a government actor.

Here, Officer Olivier (O) is an officer, and thus a government actor, that could have potentially breached D's 5th Amm. right.

### ***Custodial Interrogation***

The real issues is whether or not D felt like she was free to leave or not when O asked, what she was during outside such on a cold night. There are no facts to indicate that that D felt like she was not free to leave, however, as a transient person, one may feel that they are obligated to answer questions and remain everytime an officer stops them. Though this may be a strong argument, D was free to walk away as she was on a public sidewalk and O did not stop her to restrain her from her freedom.

Thus, the question does not meet the requirement of custodial interrogation.

### ***Voluntary Statement—Exception to 5th Amm.***

If the statement was said voluntarily, without coercion, and the officer had could not foreseeably see that their question would illicit an self-incriminating statement, the statement is admissible.

Here, the general question asked by O asking her what D was doing outside in the cold would not foreseeably be seen by O that D would say the self-incriminating statement of "I started the fire." This suggests that the D's statement was voluntary without coercion due to the fact there was no way of knowing O's question would illicit such response.

Thus, D's statement was voluntary.

For all discussed above, the statement would be admissible and is not a violation of D's 5th Amm.

Question #1 Final Word Count = 1635

**END OF EXAM**