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Homicide

1. If the young woman killed the rival gang member because of the threat to her own life, the young woman should be found

The young woman is charged with first-degree murder. First-degree murder is defined in the jurisdiction as the intentional premeditated killing of another. Second-degree murder is any other murder at common law. A young woman joined a neighborhood gang. At a gang meeting, as part of the initiation process, the leader ordered the young woman to kill a member of a rival gang. The young woman refused, saying she no longer wanted to be part of the group. The leader, with the approval of the other members, told the young woman that she had become too involved with the gang to quit and that they would kill her if she did not accomplish the murder. The next day the young woman shot a member of a rival gang to death while the rival gang member was sitting on his motorcycle outside a restaurant.

- Not guilty, because of the defense of duress
- Not guilty, because of the defense of necessity
- **Guilty of first-degree murder**
- Guilty of second-degree murder

Note:

C is correct. The young woman, intentionally and with premeditation, shot and killed the rival gang member, and should be convicted of first degree murder. Since the young woman had known she was to commit this murder the day before and, having armed herself with a gun, had gone to the restaurant with the intent to kill the rival gang member, and did, in fact, kill the rival gang member, the young woman is guilty of intentional and premeditated murder in the first degree.

A is incorrect. Duress does not provide a defense to a murder charge; the law recognizes no duress so severe that it will mitigate the intentional killing of another human being.

B is incorrect. Necessity is not available as a defense when the charge is murder; there is no necessity great enough to mitigate the intentional killing of another human being.

D is incorrect. The young woman intentionally, and with premeditation, killed the rival gang member, and is thus guilty of first degree murder and not second degree murder. Since the young woman killed the rival gang member intentionally and with premeditation, and the defenses of duress and necessity cannot be raised to a charge of murder, the young woman is guilty of first degree murder. Adequate provocation is also not an issue here, because premeditated murder does not fall into provocation, which tends to be in the moment.

2. The defendant may be found guilty of murder

Assume that the jury makes the following findings: the defendant did not act in a rage provoked by the victim's accusations, the defendant intended either to kill or to inflict serious bodily harm, and the killing occurred in the course of an aggravated assault. This jurisdiction defines aggravated assault as an assault with any weapon or dangerous implement and punishes it as a felony. It defines murder as the unlawful killing of a person with malice aforethought or in the course of an independent felony. At a party for coworkers at a defendant's home, the victim accused the defendant of making advances toward his wife. The victim and his wife left the party. The next day at work, the defendant saw the victim and struck him on the head with a soft-drink bottle. The victim fell into a coma and died two weeks after the incident.

- Only because the jury found that the defendant intended to kill the victim
- Only because the jury found that the defendant did not act in a rage provoked by the victim's accusations
- **Because the jury found that the defendant intended either to kill or to inflict serious bodily harm**
- Because the jury found that the killing occurred in the course of an aggravated assault

Note:

This jurisdiction defines aggravated assault as an assault with any weapon or dangerous implement and punishes it as a felony. It defines murder as the unlawful killing of a person with malice aforethought. Malice aforethought arises when the defendant commits the unlawful killing with one of the following mental states: intent to kill, intent to inflict great bodily harm or depraved/malignant heart (a killing committed with reckless indifference to an unjustified risk of human life). The statute in this jurisdiction also provides murder will be found if a killing occurs in the course of an independent felony. Felony murder is a killing caused during the attempt or during the commission of an inherently dangerous felony, such as robbery, burglary, rape, kidnapping, and arson. The intent required for a felony murder conviction is the intent necessary to commit the underlying felony. The underlying felony for felony murder cannot itself be a killing.

Voluntary manslaughter is a killing resulting from an adequate provocation (heat of passion killing) or imperfect self-defense. Adequate provocation requires that provocation would cause sudden and intense passion in an ordinary person, causing him to lose self-control; the defendant was in fact provoked; there was insufficient time for an ordinary person to cool off, and the defendant did not cool off.

C is correct. Here, the facts tell us the jury found that the defendant intended to either kill or to inflict serious bodily harm. This satisfies the malice aforethought requirement under the definition of murder. Because the defendant killed the victim with malice aforethought (with the intent to kill or to inflict serious bodily harm), he should be found guilty of murder.

A is incorrect. It misstates the requirements of malice aforethought. Malice aforethought can be found not only by the intent to kill but also by the intent to inflict serious bodily harm. Accordingly, the answer is wrong because it is incomplete; it fails to address the jury's finding that the defendant either intended to kill or to inflict serious bodily harm.

B is incorrect. Here, a significant amount of time had passed between the provoking event and the defendant's actions, so there is no "heat of passion" defense. Furthermore, it is possible for the jury to find that the defendant was provoked by the victim and acted in a rage, but still find him guilty of murder if the rage or the provocation was unreasonable or insufficient to constitute an adequate "heat of passion" killing.

D is incorrect. This jurisdiction defines felony murder as an unlawful killing in the course of an independent felony. An independent felony is one that is not part of the act of the killing. For example, manslaughter and aggravated battery usually do not qualify because they are not independent acts from the killing. Here, aggravated assault would be a lesser-included offense for felony murder purposes. Therefore, aggravated assault is not considered an independent felony for the purpose of felony murder. Typically the only felonies that will support a felony murder conviction are burglary, arson, rape, robbery, and kidnapping.

3. If charged with murder of the man, the teller should be found

A bank teller was fired by the president of a bank. The teller wanted to take revenge against the president, but decided against attempting it personally, because he knew the president was protected around the clock by bank security guards. The teller knew a man who had a violent temper and was very jealous. The teller falsely told the man that the man's wife was having an affair with the bank president. Enraged, the man said, "What am I going to do?" The teller said, "If it were my wife, I'd just march into his office and blow his brains out." The man grabbed a revolver and rushed to the bank. He walked into the bank, carrying the gun in his hand. One of the security guards, believing a holdup was about to occur, shot and killed the man.

- **Guilty, based upon extreme recklessness**
- Guilty, based upon transferred intent
- Not guilty, because he did not intend for the man to be shot by the security guard
- Not guilty, because he did not shoot the man, and he was not acting in concert with the security guard

Note:

Murder is the unlawful killing of another human with malice aforethought. Malice refers to the mens rea required for a murder conviction. Malice aforethought arises when the defendant commits the unlawful killing with one of the following mental states: intent to kill, intent to inflict great bodily harm or depraved/malignant heart (a killing committed with reckless indifference to an unjustified risk of human life).

Under the implied malice doctrine, a defendant who acts knowingly and recklessly (which includes the intent to commit serious bodily injury and depraved heart intent) can be found to have the requisite mental intent to commit murder. As mentioned above, a murder conviction does not require intent to kill and a guilty conviction can flow from extreme recklessness or reckless indifference to an unjustified risk of human life. Further, in criminal law, the defendant's act must have been the proximate cause of the death of a victim to prove murder. Proximate cause means "legal cause," or one that the law recognizes as the primary cause of the injury. It is an act that produces foreseeable consequences.

If a defendant intended a harmful result to a particular person or object and, in trying to carry out that intent, caused a similar harmful result to another person or object, his intent will be transferred from the intended person or object to the one actually harmed. (E.g., A shoots B, intending to kill him. Because of bad aim, A's shot hits C, killing him. A is guilty of murdering C because A's intent to kill B will be transferred to C. Note that A may also be guilty of the attempted murder of B.)

A is correct. Here, the teller took actions that ensured the man would walk into a heavily guarded bank with a gun. This is sufficient to show extreme recklessness to an unjustified risk of human life. Further, the teller was the proximate cause of the man's death because the teller knew the man had a violent temper and was very jealous. By falsely telling the man that the man's wife was having an affair with the bank president and saying, "If it were my wife, I'd just march into his office and blow his brains out [,]" the teller was ensuring the man would enter the guarded bank with a gun. Because it was foreseeable that the man would be killed, the teller should be found guilty of murder based on his extreme recklessness.

B is incorrect. This answer reaches the correct answer with the wrong reasoning. Transferred intent does not apply in cases where the actor doing the killing is different than the one who had the intent to kill. In other words, A's intent (the teller's intent to kill the president) will not transfer to B's act of killing (the security guard taking the shot) of C (the man, who died) because A and B (the teller and security guard) are different actors.

C is incorrect. As discussed above, the teller can be found to have acted with implied malice by taking actions that ensured the man would walk into a guarded bank with a gun. It is not necessary that the teller had the intent that the man be killed; it is sufficient that the death of the man was a foreseeable result of the actions the teller put into motion, and that those actions were taken with extreme recklessness.

D is incorrect. The charge does not require that the teller be the one to shoot the man, or that he act in concert with the security guard. As explained above, the teller proximately caused the death of the man and did so with extreme recklessness, and as such, the teller should be found guilty of murder.

4. If the bar patron is prosecuted for manslaughter, his best chance for acquittal would be based on an argument that

One evening, a bar patron had several drinks and then started to drive home. As he was proceeding down Main Boulevard, an automobile pulled out of a side street to his right. The bar patron's car struck this automobile broadside. The driver of the other car was killed as a result of the collision. A breath analysis test administered after the accident showed that the bar patron satisfied the legal definition of intoxication.

- The other driver was contributorily negligent
- **The collision would have occurred even if the bar patron had not been intoxicated**
- Because of his intoxication he lacked the *mens rea* needed for manslaughter
- Driving while intoxicated requires no *mens rea* and so cannot be the basis for misdemeanor manslaughter

Note:

Manslaughter is a killing committed with criminal negligence or during the commission of an unlawful act. The term "reckless" essentially describes a defendant's simultaneous understanding and disregard of a substantial risk of harm. An involuntary manslaughter charge can be brought against a defendant as a result of a deadly car crash caused by a motorist under the influence of alcohol or drugs. While the defendant never intended to kill anyone, his or her negligence in driving while impaired is enough to meet the requirements of the charge. Criminal liability for manslaughter, however, requires a causation element. The usual method of establishing factual causation is the but for test. The but for test asks whether the harm wouldn't have occurred 'but for' the defendant's act?

B is correct. This answer choice addresses the causation element and gives the defendant the best chance of acquittal. The bar patron's best argument for acquittal is that the accident would have occurred even if the bar patron had not been intoxicated. As such, the defendant's reckless action (drunk driving) giving rise to the manslaughter charge was not a cause in fact ('but for' cause) of the other driver's death. Because the action that the bar patron took was not a cause in fact, he cannot be convicted of manslaughter.

A is incorrect. Contributory negligence is a civil issue and does not apply to criminal manslaughter cases.

C is incorrect. Voluntary intoxication is only a defense to specific intent crimes such as first degree murder, inchoate crimes, assault, and theft crimes. Voluntary intoxication, however, does not apply to crimes involving criminal negligence, such as manslaughter. The bar patron's argument that he was too intoxicated to be criminally negligent will not succeed.

D is incorrect. For a manslaughter charge, a defendant can have committed a killing with criminal negligence OR during the commission of an unlawful act. The argument that the bar patron did not commit manslaughter by virtue of there being no underlying misdemeanor ignores the possibility that the bar patron committed manslaughter by virtue of carrying out a criminally negligent act. Therefore, this is an ineffective defense. The bar patron's best chance for acquittal is to argue that, because the collision would have occurred even if the bar patron had not been intoxicated, the criminally negligent acts he took were not the cause in fact of the death.

5. The most serious degree of criminal homicide the defendant is guilty of is

At 2 a.m., the defendant held up an all-night liquor store using an assault rifle. During the holdup, two police cars with flashing lights drove up in front of the store. In order to create a situation where the police would hesitate to come into the store (and thus give the defendant a chance to escape out the back), the defendant fired several rounds through the front window of the store. The defendant then ran out the back, but upon discovering another police car there, surrendered quietly. One of the shots he fired while in the store struck and killed a burglar who was stealing items from a closed store across the street. A statute in the jurisdiction defines murder in the first degree as knowingly killing another person after deliberation. Deliberation is defined as "cool reflection for any length of time no matter how brief." Murder in the second degree is defined as "all other murder at common law except felony-murder." Felony-murder is murder in the third degree. Manslaughter is defined by the common law.

- Murder in first degree
- **Murder in the second degree**
- Murder in the third degree
- Manslaughter

Note:

Murder can be defined by statute or it can derive from common law. Statutory murder, or murder in the first degree, involves knowingly killing another person after deliberation. When a statute requires that the defendant act knowingly, a subjective standard is being used; i.e., the question is what was actually going on in the defendant's mind. A person acts "knowingly" when he is aware of a high probability that certain outcomes will occur, or when he knows that his conduct will necessarily or very likely cause such a result.

Murder, as defined by common law, (in this question, murder in the second degree), is the unlawful killing of another human with malice aforethought. Malice refers to the mens rea required for a murder conviction. Malice aforethought arises when the defendant commits the unlawful killing with one of the following mental states: intent to kill, intent to inflict great bodily harm or depraved/malignant heart (a killing committed with reckless indifference to an unjustified risk of human life).

Felony murder is a killing that occurs during the attempt or commission of certain felonies, such as burglary, robbery, rape, arson, and kidnapping. The state statute in this question felony murder as murder in the third degree, and as such, is a less serious degree of homicide than premeditated murder or common law murder.

Finally, manslaughter, as defined by common law, is a killing committed with criminal negligence or during the commission of an unlawful act. The term "reckless" essentially describes a defendant's simultaneous understanding and disregard of a substantial risk of harm. Manslaughter is less serious than the above-mentioned forms of homicide.

B is correct. Here, the defendant committed murder in the second degree, or common law murder. He committed an unlawful killing of another human with malice aforethought (with reckless indifference to an unjustified risk of human life). The defendant's firing of an assault rifle through the front window of the store, especially knowing there were people outside, shows the defendant's reckless indifference to an unjustifiably high risk to human life. This satisfies the malice aforethought requirement for second degree murder under the state statute.

A is incorrect. The statute defines murder in the first degree as "knowingly" killing another person after deliberation. Here, the facts do not support that the defendant "knowingly" killed another person after deliberation. Rather, the facts suggest that the defendant lacked the specific intent to kill or to do great bodily harm to anyone because he was not aware the burglar existed.

C is incorrect. The question asks for the most serious degree of criminal homicide. Although the defendant likely did commit murder in the third degree (felony murder), that is not the most serious degree of criminal homicide the defendant is guilty of committing. As discussed above, the defendant committed second degree murder, which is more serious than felony murder.

D is incorrect. The question asks for the most serious degree of criminal homicide. As discussed above, the defendant is guilty of murder in the second degree and because this is the more serious criminal homicide, manslaughter is incorrect.

6. The court should

At the end of the case, the defendant moves for a judgment of acquittal or, in the alternative, for an instruction on the elements of voluntary manslaughter. A defendant and a sports fan were engaged in a heated discussion over the relative merits of their favorite professional football teams when the defendant said, "You have to be one of the dumbest people around." The sports fan slapped the defendant. The defendant drew a knife and stabbed the sports fan in the stomach. Other people then stepped in and stopped any further fighting. Despite the pleas of the other people, the sports fan refused to go to a hospital or to seek medical treatment. About two hours later, he died as the result of a loss of blood. The defendant was charged with the murder of the sports fan. At trial, medical evidence established that if the sports fan had been taken to a hospital, he would have survived.

- Grant the motion for acquittal
- **Deny the motion for acquittal, but instruct on manslaughter because there is evidence of adequate provocation**
- Deny both motions, because the defendant failed to retreat
- Deny both motions, because malice may be proved by the intentional use of a deadly weapon on a vital part of the body

Note:

Murder is the unlawful killing of another human with malice aforethought. Malice refers to the mens rea required for a murder conviction. Malice aforethought arises when the defendant commits the unlawful killing with one of the following mental states: (i) intent to kill; (ii) intent to inflict great bodily harm; or (iii) depraved/malignant heart (a killing committed with reckless indifference to an unjustified risk of human life).

For a homicide conviction, the defendant's act must have been the proximate cause of the death of a victim. A proximate cause is an act that produces foreseeable consequences. It is foreseeable that an injured person may refuse to get medical attention, and a victim's refusal to seek medical attention will not break the chain of causation.

Whether an intervening act is sufficient to break the chain of causality in a homicide case rests on the foreseeability of the intervening act. A defendant will be held criminally responsible for the foreseeable consequences of his actions; however, if an unforeseeable act intervenes, a defendant will not be deemed responsible for the death.

Voluntary manslaughter is a killing resulting from an adequate provocation (heat of passion killing) or imperfect self-defense. Adequate provocation requires that provocation would cause sudden and intense passion in an ordinary person, causing him to lose self-control, that the defendant was in fact provoked, there was insufficient time for an ordinary person to cool off, and the defendant did not cool off.

Imperfect self-defense refers to a situation where a defendant murders someone while acting in self-defense and his criminal liability can be reduced to voluntary manslaughter if the defendant either: (i) provoked the initial altercation that required the self-defense; or (ii) unreasonably believed deadly force was necessary.

A jury should be instructed as to voluntary manslaughter if there is at least some evidence that the murder was done in the "heat of passion."

B is correct. The defendant's motion for acquittal should be denied because there is sufficient evidence for the jury to find the defendant guilty of murder. The defendant can be found to have committed an unlawful killing with malice aforethought, in this case at least the intent to inflict great bodily harm or depraved heart (reckless indifference to an unjustified risk of human life). The sports fan's refusal to seek medical treatment is an insufficient intervening act to allow the defendant to escape criminal liability for stabbing the sports fan. The defendant stabbed the sports fan in the stomach, and the sports fan died as a result of the injury. Because the victim's refusal to seek medical treatment is foreseeable, it is insufficient to allow the defendant to escape criminal responsibility for his actions. As such, the motion for judgment of acquittal should be denied.

Furthermore, a jury should be instructed as to voluntary manslaughter if there is at least some evidence that the murder was done in the "heat of passion." Here, the sports fan slapped the defendant and this could be considered adequate provocation, and, as such, a reasonable jury could find that the defendant was acting in the "heat of passion" when he stabbed the sports fan. Because there is some evidence such that a reasonable jury could find the defendant guilty of voluntary manslaughter, the jury should be instructed on that issue.

A is incorrect. The sport's fan refusal to seek medical attention will not break the chain of causality because a refusal of medical care is a foreseeable consequence. There is also sufficient evidence that the man can be found guilty of murder (committing an unlawful killing of another human with malice aforethought, in this case, intent to inflict great bodily harm or depraved heart).

C is incorrect. The defendant, even if he did not retreat, could still be found to have acted in the "heat of passion" as a result of adequate provocation. Here, the sports fan slapped the defendant and this could be considered adequate provocation, and, as such, a reasonable jury could find that the defendant was acting in the "heat of passion" when he stabbed the sports fan. Because there is some evidence of adequate provocation, the jury should be instructed on that issue.

D is incorrect. Although malice may be proved by the intentional use of a deadly weapon on a vital part of the body, there was still some evidence presented that the defendant did so in the "heat of passion." Because it is possible for a reasonable jury to find the defendant guilty of voluntary manslaughter, the jury should be so instructed.

7. The appellate court should

The marksman was convicted of murder. He appealed, contending that the evidence was not sufficient to support a conviction of murder. A marksman bought a new rifle and wanted to try it out by doing some target shooting. He went out into the country to an area where he had previously hunted. Much to his surprise, he noticed that the area beyond a clearing contained several newly constructed houses that had not been there before. Between the houses there was a small playground where several children were playing. Nevertheless, the marksman nailed a paper target to a tree and went to a point where the tree was between himself and the playground. He then fired several shots at the target. One of the shots missed the target and the tree and hit and killed one of the children in the playground.

- **Affirm the conviction, because the evidence is sufficient to support a conviction of murder**
- Reverse the conviction and remand for a new trial, because the evidence is not sufficient for murder but will support a conviction of voluntary manslaughter
- Reverse the conviction and remand for a new trial, because the evidence is not sufficient for murder but will support a conviction of involuntary manslaughter
- Reverse the conviction and order the case dismissed, because the evidence is sufficient only for a finding of negligence and negligence alone cannot support a criminal conviction

Note:

A is correct. When determining the sufficiency of the evidence to sustain a charge, the appellate court considers the evidence in the light most favorable to the state. In this case, the marksman placed his target so that, if he missed, he would be shooting in the direction of the children; he fired numerous shots from a rifle in the direction of an occupied playground and killed a child. Even though he did not have the intent to kill, the evidence is sufficient for a jury to find that the marksman acted with extreme recklessness toward human life, which is sufficient for a finding of malice aforethought for the murder conviction. The appellate court should affirm the conviction of murder.

B is incorrect. The evidence was sufficient and because there was no "heat of passion" defense presented which might allow for a voluntary manslaughter charge.

C is incorrect. The evidence was sufficient to prove malice aforethought, and because the marksman's actions were more than just negligent; they were grossly reckless.

D is incorrect. The evidence was sufficient to sustain a conviction, and because criminal negligence can indeed support a criminal conviction. Because the appellate court considers only whether there is sufficient evidence to support the conviction, the jury could have found that the marksman's extreme recklessness was sufficient for a finding of malice aforethought necessary for a murder conviction. Therefore, his conviction should be affirmed.

8. The most serious degree of criminal homicide of which the husband can be legally convicted is

Suffering from painful and terminal cancer, a wife persuaded her husband to kill her to end her misery. As they reminisced about their life together and reaffirmed their love for each other, the husband tried to discourage the wife from giving up. The wife insisted, however, and finally her husband held a gun to her head and killed her.

- No degree of criminal homicide
- Involuntary manslaughter
- Voluntary manslaughter
- **Murder**

Note:

D is correct. The husband, with deliberation and premeditation, and with the intent to kill his wife, put a gun to her head and shot her. The husband is guilty of murder. The motive (which is not the same thing as intent) behind the husband's actions does not excuse this murder and does not negate his premeditation, deliberation, and malice aforethought.

A is incorrect. A "good" motive for murder is not a legally acceptable defense to a murder charge.

B is incorrect. Involuntary manslaughter is not the most serious degree of criminal homicide for which the husband can be convicted. Additionally, it ignores the fact that the husband acted with malice aforethought.

C is incorrect. Voluntary manslaughter is not the most serious degree of criminal homicide for which the husband can be convicted; it ignores the husband's premeditation and deliberation in the commission of the homicide. The husband, with premeditation, deliberation, and malice aforethought, killed his wife, and the most serious degree of homicide that the husband can be legally convicted of is murder.

9. His best argument for being found NOT guilty is that he

The defendant was charged with felony murder. A defendant, in desperate need of money, decided to hold up a local convenience store. Determined not to harm anyone, he carried a toy gun that resembled a real gun. In the store, he pointed the toy gun at the clerk and demanded money. A customer who entered the store and saw the robbery in progress pulled his own gun and fired at the defendant. The bullet missed the defendant but struck and killed the clerk.

- Did not intend to kill
- Did not commit the robbery because he never acquired any money from the clerk
- Did not intend to create any risk of harm
- **Is not responsible for the acts of the customer**

Note:

Felony murder is a killing that occurs during the attempt or the commission of inherently dangerous felonies such as robbery, burglary, or statutorily enumerated felonies. The intent to commit felony murder is the intent necessary to commit the underlying felony. Essentially, the defendant must be guilty of the underlying felony or an attempt of the underlying felony.

There are several limitations to the felony murder rules. For instance, a valid defense to the underlying felony also serves as a valid defense to felony murder; the victim's death must be a foreseeable result of the felony; the victim's death must be caused before the defendant reaches a place of temporary safety; the defendant is not liable for the death of a co-felon killed by police or the original victim. Another limitation to liability for felony murder is the "agency theory" where a defendant will only be liable for felony murder of an innocent party when the killing was committed by the defendant or an accomplice.

The courts are split regarding whether a defendant is liable for felony murder when an innocent party is killed by a third party. Under the "proximate cause theory," a defendant can be liable for the death of an innocent party caused by a third party because the defendant started the series of events that caused the death. However, under the "agency theory," the defendant will only be found liable for felony murder of an innocent party when the killing was committed by the defendant or an accomplice.

D is correct. The defendant was committing robbery of the convenience store, an inherently dangerous felony. Even though he did not have a real gun, he still demanded money through the threat of force, as required for a robbery. An innocent victim, the clerk, was killed by the customer, a third party who is not the defendant or an accomplice. The defendant's best defense is one under an "agency theory" where the defendant can argue that he is not responsible for the death of an innocent party by a third party.

A is incorrect. Felony murder does not require that the defendant have the intent to kill. It is sufficient that the defendant has the intent to commit the underlying felony. In this case, the defendant had the intent to commit a robbery, which is all that is needed for purposes of intent for felony murder.

B is incorrect. Felony murder is a killing that occurs during the attempt or the commission of inherently dangerous felonies. A successful conviction of felony murder does not hinge on whether the defendant acquired the money from the clerk. It is sufficient that the defendant attempted to commit the felony; he did not need to complete the robbery in order to be liable for felony murder. It is enough that the death occurred during the commission of the felony.

C is incorrect. Robbery is the wrongful taking of another's personal property from his person or presence through the use of force or threat of force, with the intent to permanently deprive the owner of his/her property. Felony murder simply requires the intent to commit the underlying felony, in this case, robbery. It is irrelevant whether the defendant intended to harm or create any risk of harm, as long as the harm was a foreseeable result. It is foreseeable that a customer could enter the store during the commission of the robbery and could shoot and the defendant and miss.

10. The businessman is prosecuted for manslaughter. He should be

Despondent over losing his job, a businessman drank all night at a bar. While driving home, he noticed a car following him and, in his intoxicated state, concluded he was being followed by robbers. In fact, a police car was following him on suspicion of drunk driving. In his effort to get away, the businessman sped through a stop sign and struck and killed a pedestrian. He was arrested by the police.

- Acquitted, because he honestly believed he faced an imminent threat of death or severe bodily injury
- Acquitted, because his intoxication prevented him from appreciating the risk he created
- Convicted, because he acted recklessly and in fact was in no danger
- **Convicted, because he acted recklessly and his apprehension of danger was not reasonable**

Note:

D is correct. Manslaughter is a death caused by criminal negligence or recklessness under the Model Penal Code. A person acts recklessly when he consciously disregards a substantial and unjustifiable risk that circumstances exist or that a prohibited result will follow. Voluntary intoxication is no defense to recklessness crimes. Even though recklessness calls for a conscious disregard of a substantial risk, a person who was not aware of the risk because of voluntary intoxication will still be deemed to have acted recklessly. Additionally, self-defense will not be a defense if the defendant unreasonably but honestly believed in the necessity of his actions. Thus, the businessman should be convicted of manslaughter because he recklessly caused the death of a human being, and he has no valid self-defense claim.

A is incorrect. To successfully raise a self-defense claim, the businessman must not only believe that he faced an imminent threat of death or severe bodily injury, but also that belief must be reasonable. The businessman's apprehension of danger was unreasonable on its face, so he cannot make a proper self-defense claim.

B is incorrect. The businessman did not need to appreciate the risk he was creating to be found guilty of manslaughter. In addition, his voluntary intoxication was one of the reasons for his recklessness and will not serve as a defense.

C is incorrect. A proper claim of self-defense does not require that the person actually be in danger, but rather that the person reasonably believes he is in danger, even if it is not true. Since the businessman's belief that he was acting in self-defense was unreasonable, and because he recklessly killed another human being, he should be convicted of manslaughter.
