

Memo

To: Students in Substantive Criminal Law

From: Professor Donald Jones

Re: First Class Assignment

Textbook

The text in this class is Kaplan, Weisberg, and Binder, **Criminal Law: Cases and Materials** (8th ed. 2017). Unless otherwise stated all assignments are to this text.

Hypo 1: The Reasonable Self-Defender

In the case of Bernard Goetz, a former mugging victim shoots several and confronts a diminutive man sitting by himself in the subway car. One of the youths says, “mister do you have five dollars?” Goetz replies, “Yes I have five dollars for each of you” and pulls out a nickel-plated revolver. The youth’s run, but Goetz pursues them shooting several of the youths. Goetz claims self-defense.

Required Reading:

Pages 557-562, 566-592 in text. The text in this class is Kaplan, Weisberg, and Binder, *Criminal Law: Cases and Materials* (8th ed. 2017).

Assignment: Traditionally one could use force only when a reasonable man would feel in imminent danger of serious bodily harm. Who is the reasonable man here? Is the reasonable man objective, colorless, without individual characteristics? Or is the reasonable man subjective - should we view reasonableness from the particularistic perspective of the actual individual faced with the dilemma of whether to shoot to kill. Or, is the reasonable man both objective and subjective? Please explain. Write an essay of 300-750 words.

Cynthia Kwei Yung Lee, *Race and Self-Defense: Toward a Normative Conception of Reasonableness*, 81 *Minnesota Law Review* 367 (1996)

Donald Braman, *Who is the Reasonable Person? Cultural Cognition and the Reasonable Person*, 14 *Lewis and Clark* 1455 (2010).

Hypo 2: A Choice of Evils

Thomas Dudley, Edward Stephens, Brooks and a “cabin boy” were sailors on an English yacht called the Mignonette. It sank in a storm and they became “castaways” 1600 miles from land. Their food, two-1 lb. tins of turnips, was exhausted after three days. They caught a turtle but by the 12th day, that had been completely consumed. The only water they had was what they could catch in their oil-skin capes. After 7 days without food and five without water, the three adult men, Stephens and Dudley decided, among themselves, they should kill the boy who was ill and helpless. Dudley and Stephens reasoned that the boy would have likely died anyway. Brooks dissented. There was no drawing of lots. At the time of the killing there was no sail in sight. They killed the helpless boy by slitting his throat. The three men then dismembered his body and ate his flesh in order to survive. Shortly after, the men were rescued. They were tried for homicide when they reached the shores of England.

Assignment: Write an essay of 300-750 words explaining whether the defendants were justified - or excused - in the killing of the cabin boy under the doctrine of necessity.

Required Reading: Pages 605-616 of text

Hypo 3: Can mere words kill?

Conrad Roy was depressed. He had attempted suicide before. He did hundreds of online searches and developed a plan to end his life. Conrad shared his suicidal thoughts with a friend named Michelle Carter, then 17. Ms. Carter at first texted Conrad advising him to seek help.¹ Weeks later, Michelle Carter’s attitude changes. She sends Conrad hundreds of texts variously encouraging and instructing him how to and ultimately urging him to go through with his suicide. The following exchange was typical:

Carter: "So I guess you aren't gonna do it then, all that for nothing"

Carter: "I'm just confused like you were so ready and determined"

Roy: "I am gonna eventually"

Roy: "I really don't know what I'm waiting for. But I have everything lined up"

Carter: "No, you're not, Conrad. Last night was it. You keep pushing it off and you say you'll do it, but u never do. It's always gonna be that way if u don't take action"

Carter: "You're just making it harder on yourself by pushing it off, you just have to do it"²

Later that day, Conrad Roy ran a hose from the generator into the cab of the truck. He turns it, gets in the cab, and begins the process that might have led to his asphyxiation. Before the carbon monoxide takes effect, Conrad gets out of the truck and texts his “friend” Michelle Carter, telling her of his aborted attempt at suicide and confessing was scared. “Get back in” she replied. He was found dead the following day in a Kmart parking

¹ See texts from June 19, 2014 and June 23, 2014 Paul Leblanc, The Text Messages that led to Teen’s Death, CNN, June 16, 2017.

<http://www.cnn.com/2017/06/08/us/text-message-suicide-michelle-carter-conrad-roy/index.html>

² *Id.*

lot, several miles outside Boston. Michelle is indicted as a juvenile and later convicted of manslaughter.

"This court has found that Carter's actions and failure to act where it was her self-created duty to Roy since she put him in that toxic environment constituted reckless conduct," the judge said.

Michelle Carter was not physically present at the scene, did not purchase or supply the truck, the generator or any of the instrumentalities that Roy used to commit suicide.

Assignment: Write a brief essay of 300-750 words explaining whether or not Michelle Carter "caused" the death of Conrad Roy.

Required Reading: Pages 311-330 of text