

throws match = actus reus; mens rea: 3 utterances; issue – lack of subjective awareness? Negligence (gross or ordinary?); invol. manslaughter?

QUESTION I

(25 minutes)

John is the owner of a music store that sells musical instruments, sheet music, and other music-related merchandise. Across the street from John's store is a vacant gas station that Ringo, a local developer, recently bought with plans to use the land to build a condominium development. There has been substantial opposition to Ringo's plans among residents and storeowners in the area. John is one of the opponents.

Ringo begins work on the lot by hiring a work crew to remove an old gasoline storage tank buried under the front part of the lot. The workers raise the tank to the surface and place it in a large shed. Almost immediately, noxious fumes start seeping out, much to the annoyance of John and other neighbors.

The next day, John sees Ringo standing outside the shed. He approaches Ringo and expresses his concern over the smell and warns Ringo that the tank could explode if the fumes were ignited. In response, Ringo sneers at John and says, "You and your pals will do anything to make this project harder for me. Well, it won't work!" Ringo then says, "Here, I'll prove to you that it's perfectly safe," and throws a lit match into the shed. A fire immediately breaks out. Ringo later tells the police, sincerely, that he was "absolutely convinced" that John was lying and that it therefore "never occurred" to him that the gas might actually ignite.

Ringo created risk & fail to assist = omissions actus reus; mens rea – no utterances? Infer? had been located. John, who began running as soon as he saw the fire, makes it to the sidewalk across the street before being knocked to the ground by the explosion. John, only partially conscious, crawls away and ends up behind a bush, shielding him from view. Ringo, who by now has emerged from the hole, flees the scene in a panic. He jumps over the bush and sees John lying on the ground seriously injured but still breathing. Ringo continues to run. John would have survived had he received medical attention promptly, but he is dead by the time a passerby notices him an hour later.

Shortly after the explosion, George, who was shaken up by the explosion and was upset at not being able to locate her husband, has just returned from a nearby tavern where she downed three gin-and-tonics in rapid succession. She is legally intoxicated. George has long disliked Yoko and wrongly jumps to the conclusion that Yoko was somehow responsible for the explosion. George gets out of his car, approaches Yoko, and forces her into the front passenger seat of the car, where he restrains her by binding her with rope that he happened to have in his car.

The police quickly determine that Yoko is innocent of any involvement with the explosion, but they arrest her for violation of a statute that reads:

"It is an offense for any person to be found, while intoxicated, in the driver's seat or front passenger area of any automobile."

Assume that under general common law principles, offenses of this type (operating vehicles while intoxicated) required proof of recklessness.

Discuss the criminal liability of **Ringo** and **Yoko**, under **both** common law principles **and** the Model Penal Code.