

Answers to problem solving questions

Problem question

Amelia has an aggressive disposition. She has a stormy relationship with Bill, who physically and mentally abuses her. He threatens to run her over unless she stops seeing all her friends. She becomes depressed and begins hearing voices which tell her to kill Bill. On the night in question, she drinks four vodkas and stabs him with a kitchen knife. She knows that it is wrong but cannot stop the impulse to kill him. Bill dies four days later. Amelia then purchases some heroin for herself and her friend, Cynthia. She loads up a syringe and gives it to Cynthia who says she will take it later. After several hours, Cynthia self-injects herself with the heroin and dies. Discuss whether Amelia has committed the murder of Bill and Cynthia.

Outline answer for question

A good answer would include all or most of the following points which are set out in outline here.

- Define the offence and then examine the elements of both AR and MR (6.1):
- **AR:** There has been an unlawful killing of a human being. There is no break in the chain of causation. Amelia is the cause of death.
- **MR:** The MR for murder requires intention (either direct or oblique) to kill or cause GBH. (6.2 and 3.1) We do not know from the facts whether Amelia wanted to kill, cause GBH or a lesser injury. There are 4 possibilities:
 - If she stabbed with the purpose of causing death or GBH she will have had a direct intention.
 - If death/GBH was not her purpose but it was virtually certain (objectively) and she foresaw this fact, she will have an oblique intent according to Nedrick/Woolin.
 - If she foresaw death/GBH as only probable, her offence will be reckless or unlawful act manslaughter (the unlawful act being an assault).
 - If she intended a lesser injury, again, her offence will be manslaughter.
- **Defences to murder:** (*These partial defences only apply to murder not manslaughter. If successful they will result in a conviction of voluntary manslaughter*)

Diminished Responsibility: (7.1.2)

Set out the 4 tests of S52(1) Coroners and Justice Act 2009:

- (a) abnormality of mental functioning (b) which arises from a recognised medical condition (c) so as to substantially impair D's ability to: understand the nature of her conduct, form a rational judgment and exercise self-control and (d) which provides an explanation for her acts/omissions.

Amelia may be suffering from (a) and (b) above for the following reasons:

- Domestic violence. Has this caused BWS: Ahluwalia 1992
- Depression/aggression/impulse to kill: Seers 1984/Byrne 1960
- She hears voices. She is probably permanently or temporarily psychotic (ICD-10).
- She may also be drunk at the time of the stabbing. Is she suffering from alcoholism (Tandy) or an excess of alcohol, in which case the Dietschmann/Stewart tests need to be explained, ie: whether the intoxication substantially impaired A's ability to do one of the three things in s52 (1)(a)-(c).

(c) She clearly lost her self-control.

(d) Such abnormality of mental functioning must have been a cause of the killing.

Loss of Control: (7.1.3)

Set out the 3 tests of S54(1) C&JA 2009:

- (a) There must be a loss of self-control which (b) has a qualifying trigger and (c) a person of D's sex and age, with normal tolerance and self-restraint and in the circumstances of D might have reacted in the same/similar way. No need for immediacy. Killings which have been incited, or are in revenge or which are due to sexual infidelity will be excluded. Amelia has clearly lost her self-control (7.1.3.1).

Qualifying trigger: (7.1.3.2)

Either might apply –

S55(3)- D's fear of serious violence from V against D or another [subjective]. She has been threatened with being run over. OR

S55(4) things done or said which (a) are extremely grave and (b) caused D to have a justifiable sense of being seriously wronged [objective]. Presumably both things done and said by way of the more immediate and past threats and abuse would be relevant.

The delay would not automatically exclude the defence except to the extent that delay may be evidence of revenge.

The objective test:

- age and sex will be taken in account.
- mental characteristics: whether they will be relevant to the test of 'normal tolerance and self-restraint' under s54(1)(c) still largely depends on the old cases. Therefore, any mental characteristic at which the victim's provocative conduct was aimed will also be relevant (Camplin/Holley). Strangely, this will include BWS (Thornton & Ahluwalia).

It is unlikely to include any other mental characteristic such as Amelia's depression/aggression/impulse to kill/hallucinations/drunkenness. (Holley). The House of Lords and Privy Council cases in 7.1.2.3 should be explained.

- Circumstances: the domestic violence will be relevant here (Clinton). She will be convicted of voluntary manslaughter unless the prosecution can disprove the defence.

The manslaughter of Bill by recklessness or unlawful and dangerous act should only be briefly considered since the facts clearly indicate intentional murder.

Involuntary Manslaughter of Cynthia (7.2)

- Unlawful act manslaughter: Definition consists of an unlawful act, danger and causation.
- There needs to be an unlawful act. Amelia possesses and supplies heroin to Cynthia. These are criminal offences (s23 Offences Against the Person Act 1861 and drugs offences) but the supply does not cause death. C's own self-injection breaks the chain of causation: Kennedy No 3 [2007]. There is therefore no need to go on to consider the other requirements.
- Gross negligence manslaughter: if Amelia had remained with Cynthia and had unsuccessfully attempted to care for her, she may have committed this offence (Gemma Evans 2009). This is not disclosed on the facts however and so does not need to be considered further.