

Answers to problem solving questions

Outline Answer

Issues: Murder/involuntary manslaughter

Definitions: AR/MR of murder. Explanation of distinction from manslaughter. (**See Introduction and 6.1.**)

D's liability for V's death:

Murder: AR – set out the four elements. (**See 6.1**) The issue here is whether D caused the death of V.

- Causation: (**See 6.1.2**) His original assault began a chain leading to her death. He may argue that her decision to die and M's omission to keep her alive broke the chain. The principles of causation will need to be examined.
- Is M the cause of death? (**See 6.1.2**) *Bland* etc. say no. Has M murdered V? You will need to discuss whether M has committed an offence with reference to euthanasia/positive acts and omissions. Review relevant authorities. Include discussion of intention (Chapter 3) in respect of potential murder and gross negligence/breach of duty (*Bland*)/Human Rights Act 1998. If M has not committed an offence, s/he is unlikely to have broken the chain between D and V.

MR – (**See 6.2.1 and 6.2.3**) Assault: Did D intend to kill? No. Did he intend to commit gbh? This will need to be proved. If so, he will have the MR for murder. It is irrelevant that he did not foresee death. If he intended slight harm, the most likely offence is involuntary manslaughter. Including criticism of the gbh rule will enhance your answer. If on the other hand, he was not intentional at all, but merely reckless, he will lack the MR for murder and may have committed involuntary manslaughter.

D's liability for B's death: Murder: AR (four elements) – is the baby a reasonable person in being? Consideration of the arguments in AG's Reference (No 3 of 1994). (**See 6.1.3**) Has D caused B's death?

MR: Can the intention to commit gbh be transferred from V to B? Again, the arguments in the case above and transferred malice need to be examined.

The alternative offence of involuntary manslaughter (unlawful act) should be considered (see next section).

NB: Problem questions on murder invariably include causation, intention, particularly oblique intention, and comparison with/distinction from manslaughter.