

Answers to Exam questions

Chapter 2

Question 1

Answer ALL parts below:

- (a) Jo is a lifeguard at the local swimming pool. While on duty she notices a child in difficulty in the pool. Does she have a duty to act to help the child? Explain your answer with reference to case law.
- (b) Would your answer to (a) above differ if Jo was on her lunch break at the time? Or if she had finished her shift?
- (c) Rob visits his friend Andy once a week. Andy is bed-bound. Rob cooks for Andy and does his shopping every week, such that Andy is wholly dependent on Rob for his food. Rob goes away on holiday for 2 weeks. On his return he finds that Andy had died due to starvation. Does Rob have the *actus reus* of murder/manslaughter re: Andy's death?

Bullets

- This question deals with omissions and requires students to apply the law relating to omissions to problem scenarios. You should refer to case law in your answer.
- You should begin by stating the general rule that there is no criminal liability for omissions to act; a person can only usually be subject to criminal sanction where he has performed a positive act. It is often said that under English law there is no duty of "easy rescue".
- However, this is subject to a number of exceptions where there is a specific duty to act. Rather than set out all of these exceptions at length, you should concentrate on those that apply to the question.
- Part (a) relates to a child drowning in the swimming pool. Although there is no duty of easy rescue, this scenario would be covered by one of the exceptions. Jo is under a contractual duty to act to help the child. This is part of job and she will fail in her contractual duty to act if she does not try to help the child. The supporting case is *Pittwood*. If Jo fails to help the child and the child dies, Jo will be liable for the gross negligent manslaughter. The test from *Adomako* will apply

in respect of gross negligence. You should also consider the authorities of *Rose* (2017) and *Zaman* (2017) on gross negligence manslaughter.

- Part (b) requires discussion of the extent of Jo's contractual duty. Is she still under a contractual duty to act if she is on her lunch break or if she has just finished her shift?
- In relation to part (c), you should again start from the general rule that there is no duty of easy rescue. In this scenario, it might be said that Rob has voluntarily assumed responsibility of Andy. You should cite and apply the cases of *Instan* and *Stone and Dobinson*. Here, Rob is looking after Andy and he is dependent on him. He has a duty to feed Andy and he has failed in this duty. He will be liable for gross negligent manslaughter. Again, you should apply the test from *Adomako* in respect of gross negligence.

Question 2

Critically evaluate the approach of English law towards imposing criminal liability for an omission to act.

Bullets

- This question covers the law on omissions. Students are expected to explore the law on omissions using case law as examples. Good students will discuss the theoretical debate on omissions.
- Students should point out the general rule that there is no criminal liability for omissions; a person can only usually be subject to criminal sanction where he has performed a positive act. It is often said that under English law there is no duty of "easy rescue".
- However, this is subject to a number of exceptions where there is a specific duty to act. Students are expected to discuss these exceptions and relevant case law. For example, where there is a special relationship (*Gibbins & Proctor*, *Airedale NHS Trust v. Bland*), contractual duty to act (*Pittwood*), public duty to act (*Dytham*), statutory duty to act (eg, s.1, CYP A 1933), voluntary assumption of responsibility (*Gibbins & Proctor*, *Stone & Dobinson*) or a duty to avert a danger created by D (*Miller*).
- Addressing the quote directly, students might discuss the conventional approach and the social responsibility approach to whether or not criminal liability should

be imposed for an omission to act. The conventional view is advocated by Glanville Williams, while Ashworth prefers the social responsibility view. Ashworth argues that these are not polar opposites.

- The conventional view is that A should not be compelled to serve B. The law aims to maximise individual autonomy and liberty, consequently, citizens should not be encouraged to interfere in the lives of others, they should not be constrained to help others. Such a duty would be too onerous and would increase the possibility of mass liability and would be impractical. This view "... maintains that the criminal law should be reluctant to impose liability for omissions except in clear and serious cases... should be confined to duties towards those for whom we have voluntarily undertaken some responsibility... we should owe positive duties... only to a circumscribed group of people with whom there exists a special relationship": Ashworth, "The Scope of Criminal Liability for Omissions" [1989] LQR 424.
- "... the criminal law should recognise an individual's choices rather than allowing liability to be governed by chance, and the obligation to assist someone in peril may be thrust upon a chance passer-by, who may well prefer not to become involved at all.... Stopping to help is part of the morality of aspiration, not the morality of duty": Ashworth, *op cit*.
- Williams argues that there is a moral distinction between acts and omissions.: "We have much stronger inhibitions against active wrongdoing than against wrongfully omitting": Williams, "Criminal Omissions – the Conventional View" [1991] LQR 86.
- The social responsibility view advocated by Ashworth "... grows out of a communitarian social philosophy which stresses the necessary interrelationship between individual behaviour and collective goods": Ashworth, *op. cit*. This approach relies on the argument that all will benefit from the duty to be helped when in extreme peril, but maintains the safeguard that liability be reserved for cases where the peril far outweighs cost or inconvenience to the person required to assist. Ashworth argues that mass liability can be avoided by limiting liability to those who had particular opportunity to assist.
- "... the value of one citizen's life is generally greater than the value of another citizen's temporary freedom": Ashworth, *op. cit*.
- You could explore further academic journal articles on omissions liability and incorporate the opinions of other academics in your answer.

- Students are expected to conclude by addressing the question directly. Good students will proffer an opinion on the issue.