

Answers to problem solving questions

Outline Answer

D's liability

D is a terrorist who has killed an innocent civilian. Offences: A's liability for murder or manslaughter: definition of AR and MR of each. **See 3.1.1 and 3.1.2.**

MR issues - homicide: intention or recklessness.

Murder requires direct/oblique intent. Definition of each. **See 3.1.4 and 3.1.5.**

Discuss/evaluate the law.

Reference should be made to the section headings of this chapter: intention is not the same as motive, therefore A's political aims are irrelevant. **(3.1.7)** Intention is subjectively assessed. **(3.1.4 and 3.1.5)** Under *Nedrick/Woollin* foresight is relevant to oblique intention but may not be the same as intent, only evidence of it. You need to discuss previous and current case law regarding the need for foresight of a virtual certainty. **(3.1.5)** Therefore an assessment of A's foresight needs to be made: if of a virtual certainty then the jury, in accordance with s8 CJA 1967, may be invited to consider the current *Nedrick/Woollin* guidelines which should be set out. The arguments in *Woollin* should be summarised. Foresight of less than a virtual certainty may be evidence of intent. A critical evaluation of the law will attract more marks.

Application of law to facts:

The prosecution will argue that D has committed murder:

- A may have had a direct intent for murder if the early release was deliberate.
- A may have had an oblique intent for murder if he foresaw death/gbh would occur as a virtual certainty despite the warning. D may only have wanted to make a political point but what he wanted (either motive or direct intent) does not mean that he did not also foresee other inevitable harmful consequences. Lord Bridge in *Moloney* accepted this proposition.

The Defence will argue that D has committed manslaughter:

- A may have been reckless if the early release was not planned and he thought that death/gbh was probable.
- The *Nedrick/Woollin* test is flexible so as to reflect the moral context in which the killing occurs. Is this a situation in which the jury should have the discretion to decide either way?
- They will emphasize the opinion of Lord Steyn in *Woollin* that a terrorist who does not foresee death/gbh as virtually certain may have been reckless but was no murderer. Any sensible discussion and evaluation of the facts will attract marks.

A's liability:

- Criminal damage to the shed: offence definition (AR & MR) **(See 3.2.1).**

- Did she intend to cause the damage? No evidence of direct/oblique intent (**See 3.1**).
- Is she reckless? Current test is subjective after *R v G*. Her state of mind is relevant. (**See 3.2.3**)
- Explanation of *R v G* taking into account the problems of the previous objective test of recklessness under *Caldwell*. Use the headings of this section to assist (as above) (**See 3.2.3**).
- Assault/Actual bodily harm to B (AR & MR) (**See 3.2.1**).
- Again, the current test of recklessness is subjective. Did she knowingly take an unreasonable risk of bodily harm to another by lighting the fire? (**See 3.2.3**).
- Application of law to the facts: her state of mind must be examined. Immaturity/age may have prevented her from forming any awareness of the risk of her actions. If so, she will be not guilty. If, despite those characteristics, she was able to appreciate the risk, she will be guilty.