

Answers to problem solving questions

Outline answer for question 1

Offence: Assault. AR/MR. (Refer to the examples in 2.1.1)

See 2.1.1. Has D committed the AR of assault? In order to answer this you will need to refer back to the general requirements of the AR above. *The only relevant condition here is that the AR must be voluntary: willed muscular action. In no way could D's original act be said to have been 'willed' or controlled. Therefore, if voluntariness is lacking, the AR may not have been committed and D cannot be convicted. This may provide D with a defence.*

Does MR coincide in time with AR? How would the courts deal with any delay between one and the other?

See 2.1.2. *The AR of assault occurs accidentally before MR arises. You should note the particular arguments referred to in Fagan on the question of assault by omission. Would the Miller duty principle be more appropriate? It was applied in Santana-Bermudez. Here you would need to apply the 'coincidence' authorities of: Thabo Meli, Fagan, Le Brun and Church where the 'continuing act' exception was used. The rolling car may be regarded as having been committed by omission.*

Do you consider D to be guilty of a common law assault?

The original act/event which caused the eventual harm was involuntary. There was therefore no guilty act (AR) at the beginning of the continuing act and D should not be guilty. However, the position might be more complicated because in each case D sets in train a series of events during which a further act/omission is committed which appears to be both conscious and intended (MR). Therefore, the continuing act/duty principles may convict him.

Outline answer to question 2:

What offence could the doctors be charged with? (*Murder on the grounds of an omission and an intention to kill.*)

See 2.2.3 and note 2.4 Would the withdrawal of nutrition and failure to revive be considered an act or omission? *Omission (Bland).*

What factors would the court need to take into account in deciding whether there had been a breach of duty by omission in this case?

The best interests of the patient and whether continuation of treatment would be intolerable (Bland),.

What provisions of the European Convention on Human Rights are relevant here? *Articles 2, 3 & 8.*

Outline answer to question 3:

Issues: Homicide and causation – is the chain of causation between D's assault and V's death broken by the medical negligence or by V's reaction?

Offence: Homicide – give the AR definition (MR not yet covered).

Law/Application: - See 2.3.2 and 2.3.3. Factual causation (*White, Dalloway*) appears to be satisfied in relation to D. Legal causation depends on an unbroken chain between D's unlawful act and V's death. The chain will be broken by:

- a voluntary third party intervention or event. The intervention must be free, deliberate and informed. An intervention in the course of duty will not be voluntary: *Pagett*. This might apply to the doctors.
- Medical negligence which is independent of D's act (*Jordan*). Given the latitude accorded to medical negligence in causation cases, the negligence will probably not remove A's liability which will count as substantial and operating: Medical negligence will not usually break the chain of causation and is an exception to the general rule that an unforeseeable, voluntary act constitutes a *novus actus interveniens* provided:
 - D's contribution to death was *substantial, operating* (*Smith/Malcherek*) or *significant* (*Cheshire*); and
 - The negligence was not so potent or independent that it renders D's act insignificant (*Jordan*).
- An unreasonable and unforeseeable escape by V (*Roberts, Williams*). It might be considered entirely foreseeable that V would try to escape in the circumstances.
- If V's decision was to commit suicide, it might be considered voluntary but given his age, this would be unlikely. It is possible that A would be held responsible in any event: *Dear*.

Finally, D must take her victim as she finds him. The characteristics of V are relevant to the question of reasonableness (*Marjoram, Roberts, Williams & Davies*.)