

## Examination Questions and Answers

Note – these questions have been broken down to demonstrate each step in answering the question.

### Question 1

Aran, aged 17, bore a grudge against Bob because Bob had stolen his girlfriend. In order to frighten Bob into leaving the girlfriend alone, Aran poured white spirit through Bob's letter box and set fire to it at 1.00pm one afternoon. The liquid ignited and the fire spread rapidly throughout Bob's flat, causing adjoining flats to be affected by fire-damage. Unfortunately, the girlfriend, Nicole, was asleep in Bob's flat at the time. She was overcome by smoke inhalation and became unconscious. The fire was difficult to control and it was some time before Nicole could be rescued by which time she had virtually stopped breathing. Fireman Fred attempted to carry her to safety but he dropped her. Nicole suffered a fractured skull and died. On hearing the news an hour later, Bob flew into a rage and went to Aran's flat. Aran's sister, Lucy, answered the door. Bob stabbed her through the heart several times and she died. Bob had suffered from serious depression most of his life.

Discuss the criminal liability, if any, of the following:

1. Aran for the death of Nicole, paying attention to offence definition and all aspects of the AR and MR of any relevant homicide offence.
2. Aran for the damage to the building, paying attention to offence definition and, in particular, MR.
3. Bob for the death of Lucy, paying particular attention to any relevant defence/s.
4. Fireman Fred for the death of Nicole.

#### 1. Aran: Murder, Causation and Intention re Nicole

A: Murder of N. Two issues:

- AR, causation – was the negligence of Fred a *novus actus*? Following medical and police negligence authorities (Smith/Malcherek/Pagett/Cheshire) probably not but F's incompetence may give rise to Jordan-style arguments by A. Other examples where the chain of causation has been broken: Rafferty/Kennedy.
- MR: The act was deliberate but the consequential death may not have been intended or foreseen. Discussion required regarding the difference between intention and recklessness and direct/oblique intent in relation to results/consequences, pointing out the need for a subjective approach to both, the Nedrick/Woollin foresight of a virtual certainty of death/gbh in

*relation to murder and Cunningham recklessness in respect of manslaughter.*

*The appropriate manslaughter offence for a lower threshold of foreseen risk would be unlawful act or reckless manslaughter. The unlawful act must be identified and defined: arson/criminal damage.*

## 2. Aran: Criminal damage and recklessness

*Criminal damage of the building. Definition. Issue:*

- *MR – he clearly intended some damage to the building but would his age now be relevant to his ability to foresee the full extent of the damage? This could be relevant to both intention and subjective recklessness. Discussion of R v G and the subjective recklessness requirement in relation to criminal damage, overruling Caldwell.*

*The same question is relevant: did he know there was a risk to life? Again, his age may be relevant as would his knowledge of the circumstances.*

## 3. Bob: Voluntary manslaughter of Lucy

*B: Murder of L which was clearly directly intended. Defences:*

*Diminished responsibility. Definition and application. All three tests in s2 Homicide Act 1957 as amended by Coroners and Justice Act 2009 to be identified and explained. The burden of proof should be explained.*

*Loss of Control could also provide a defence. Again, all parts of the tests in s54-55 Coroners and Justice Act 2009 to be identified and explained. Issues: Qualifying trigger – the fact that he immediately lost his self-control is no longer crucial but might he have planned revenge by the time of arrival at the flat? Does B's depression make any difference to the objective test (Holley)? Could depression now form part of the circumstances under the objective test? B's immediate anger and response to news of the killing may put the characteristic into the background and thus support the defence of loss of control..*

## 4. Fred's Liability for Gross Negligence Manslaughter of N

*Discussion of principles of offence: duty, breach, risk of death and definition of gross negligence: Adomako. A question of fact. Liability unlikely in view of causation: (Pagett) and that he probably made a careless mistake.*

## **Question 2**

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Alan, a soldier, was home for the weekend. He possessed several rifles. In an argument with his father, Brian, as to who was the better shot with a gun, Alan was the first to load one of the rifles. With the aim of frightening Brian, Alan pointed the rifle at him. At that moment, however, he sneezed violently and squeezed the trigger involuntarily. Brian was shot and injured. Feeling shocked, Alan fired a second shot at an expensive vase which shattered. Alan managed to call for an ambulance but the ambulance was delayed by a freak storm. Eventually, Brian arrived at hospital where his injuries were treated. After several days he developed an infection in the wound. He was treated by Doctor Chris with an antibiotic to which Brian was allergic. The next day, seeing that he was no better, Doctor Chris administered more of the same antibiotic to Brian in extremely large doses. That night, weak, delirious and close to death, Brian jumped out of the window when he saw the doctor approaching. He fell two storeys to the ground and was killed.

Discuss the liability of the following:

1. Alan for the death of Brian.
2. Alan for the destruction of the vase.
3. Doctor Chris for the death of Brian.

*Alan*

1. *Death of Brian:*

- *Homicide: AR – causation – potential NAI's: ambulance delay/medical neglect/suicide*
- *Intention & murder: oblique intent v recklessness.*
- *Manslaughter: if not oblique intent then possible recklessness/gross negligence manslaughter, there being a duty between son and father which has been breached in a criminally negligent way.*
- *Discussion of involuntariness a defence.*

2. *Destruction of vase:*

- *Whether A has the MR for criminal damage (subjective recklessness), again subject to arguments concerning involuntariness.*

3. *Dr. Chris for death of Brian:*

*Gross negligence manslaughter: discussion of principles of offence: duty, breach, risk of death and definition of gross negligence: Adomako. A question of fact. Liability unlikely in view of A being the most significant cause of death but consideration of Jordan and suicide/victim escape cases.*