

Think box 2.1

D attends a show by a famous hypnotist in the course of which he is conditioned to embrace anyone wearing a uniform. After the show, a police officer (V) approaches D to tell him he is illegally parked. D attempts to embrace the officer but as he stumbles on wet leaves he pulls V to the ground and kicks him. V becomes unconscious. D hides V behind a bush and walks off but ten minutes later a torrential storm occurs. V drowns in a flash flood. Does D's act satisfy the AR of manslaughter?

Answer guidance

Define the AR of murder (see at the beginning of the chapter).

Is D's act voluntary? Willed muscular action? Could D's original act be said to have been 'willed' or controlled? D may have a defence of automatism in respect of the hypnosis but was his action controlled when he slipped? 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?

D appears to have intentionally kicked V. But the kicking does not kill. V dies from drowning. The AR of assault occurs before D intentionally disposes of V's body.

Here you would need to apply the 'coincidence' authorities of: Thabo Meli, Fagan, Le Brun and Church where the 'continuing act' exception was used. Note though that the courts will probably prefer the 'Duty' principle under the case of Miller which was referred to in Fagan – next section.

Do you consider D to be guilty?

The original act/event which caused the eventual harm was involuntary. There was therefore no guilty act (AR) of either offence 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.

Think box 2.2

A child jumps into a swimming pool and gets into difficulty. The following people observe the child drowning but fail to save her. Who amongst them would commit a criminal offence if she drowned? Mother/life guard/neighbour/mother's cohabitee/relative by marriage (such as a halfbrother or uncle)/cousin/baby-sitter/teacher/stranger.

Answer guidance

The principle in *Stone & Dobinson* covered blood relative or assumption of responsibility. The only parties here who are clearly covered therefore are the mother and life-guard and any of the others who may have assumed responsibility for the child, subject to the arguments in the text regarding the vagueness of the *Stone* categories. It would of course only be reasonable to expect everyone to assist the child but the law imposes a legal duty upon very few people.

Think box 2.3

- Do you think a duty should exist between drug suppliers and users?
- What is the difference, if any, between *Khan* and *Stone & Dobinson*?

Answer guidance

The first question is a matter of opinion. You may feel that if there is some prior history between the two individuals, i.e.: they are friends or long-term acquaintances, then perhaps the supplier should bear some responsibility for what the user does to him or herself. On the other hand, you might consider that a purely commercial relationship, albeit unlawful, should give rise to no responsibility at all.

The second question raises the issue of how little can be involved in the creation of a duty in some cases. In *Stone*, a duty arose on the basis of a few unsuccessful efforts to care for Fanny. Perhaps they ought to have done more but was her illness their responsibility? In *Khan*, was the victim's decision to overdose on heroin the responsibility of the two defendants?

Think box 2.4

1. F is the father of two children aged 10 and 3. He leaves them in the house for half an hour during the evening bath-time. The 10-year-old fetches a hairdryer and attempts to dry the hair of the 3-year-old whilst he is in the bath. The dryer falls into the water whilst it is switched on and the young child dies from electrocution. Has F committed the AR of any criminal offence/s?

2. M is the mother of a 5-year-old girl, V. They take a friend of V to the countryside for a picnic. Whilst M sets out the food, V and the friend play on a nearby railway line. They are struck by a train and killed. Has M committed the AR of any offence/s?

Answer guidance

1. F could be charged with s1 CYPA 1933 and/or manslaughter. The first is a conduct crime of wilful neglect of a child and the second a result crime of unlawful killing by one of three types of involuntary manslaughter: reckless, gross negligence and unlawful and dangerous act. Although there is no legal minimum age at which children can be left on their own, this father was clearly neglectful. Unless also wilful (i.e.: he knowingly failed to care for his children) he should not be guilty of the former and unless his negligence was gross he should not be guilty of the latter. Yet, a prosecution on similar facts for wilful neglect under s1 CYPA 1933 succeeded in *Burcher*, *The Times*, July 21 1987; March 1 1988 CA. One would hope that F would not today be charged with manslaughter but see next question.

2. This was based on a real case of the Edwards family in August 2001, where mother and father were convicted of gross negligence manslaughter: see 'When grief is not enough' D. Rabinovitch, *Guardian* 1.8.01. AR: unlawful killing by omission. MR: gross negligence.

Think box 2.5

D is in the middle of a long telephone conversation when she smells smoke coming from the kitchen. She had forgotten that that half an hour ago she put food under the grill. She ignores the smell of smoke and continues talking. A fire breaks out and spreads to an adjoining flat. Z, a passer-by on the street below, watches but does nothing.

1. Have D or Z committed an offence?
2. Would your answer differ if, whilst his mother was speaking on the telephone, the fire had been started by D's young son using a magnifying glass to reflect sunlight onto the tablecloth to see what would happen?

Answer guidance

1. Z has committed no offence as there is no duty on bystanders to intervene so as to prevent harm/danger. There is no general 'Good Samaritan' duty as L. Diplock in Miller explains.

D has committed the AR of criminal damage by omission. Having intentionally created a situation of danger through an initial physical act she was under a duty to counteract that danger when she became aware of it. She omitted to do so and is therefore guilty of the AR of criminal damage. Her state of mind would need to be examined in order to determine whether she was either intentional or reckless as required by the offence definition.

2. This raises a slightly different principle from Miller. Technically, according to Miller, as D did not create this dangerous situation she is not under a duty to counteract it but since D is responsible for the actions of the son, assuming he is still a child, it would only be reasonable to expect her to do something to prevent the fire from spreading and failure to do so would probably incur liability for the AR of criminal damage.

Think box 2.6

Consider whether D is the cause of V's death in the following circumstances: Is there an intervening event or are D's acts substantial and operating?

1. D knocks V unconscious on a beach. (a) V drowns when the tide comes in. (b) V dies when a tsunami floods the coast?

2. D assaults V in his flat by breaking his ankles and then leaves. An hour later a fire breaks out. V cannot escape, develops breathing difficulties as a result of the fire and burns to death?

3. In a gun battle between a group of robbers and police, an officer is killed by a police bullet?

Answer guidance

1. The first event is foreseeable and will not break the causal chain provided V was situated where the tide might be expected to reach. The second event is probably an unforeseeable natural disaster and should break the causal chain, provided D would not have drowned anyway by being placed close to the tidal sea.

2. Boreman [2000] Crim LR 409: if the breathing difficulties accelerated death, even though the injuries were not life-threatening, then D caused it. D's act need

not be the sole or main cause of death provided they contribute to it in a significant way.

3. Robber V will be held responsible even though his bullet was not the one which killed. The police bullet will not have broken the chain of causation because the police will not be acting voluntarily (Pagett).

Think box 2.7

Is D liable for V's death in the following situations?

1. D shoots V in the stomach. V then slits his own throat and dies within five minutes.
2. D has a violent argument with V who runs away and falls into a gutter. He is struck by a passing car and killed.
3. D injures V's finger. A surgeon advises amputation but V refuses and dies two weeks later from infection.

Answer guidance

1. The case of Lewis (1889) 124 Cal. 557: if the self-inflicted neck wound is connected to the gunshot wounds, then it will not break the chain of causation and D will be guilty of V's death. Also, Dear & Blaue above.
2. Corbett [1996] Crim LR 594: if the escape was one of a foreseeable range of responses to D's violence and not a daft reaction, then it will not break the chain of causation. Also Roberts, Mackie and Williams & Davis above. Remember that in Girdler [2009] even an unforeseeable intervention may **not** break the chain of causation if the result could be sensibly anticipated. This will only be the case where D's original act was more than a slight or trifling cause of death.
3. This will not break the chain, no matter how abnormal or unforeseeable: Blaue/Dear.