

Think box 6.1

What offence has D committed in the following cases?

D administers poison to a pregnant woman as a result of which:

- (a) her unborn child dies;
- (b) she goes into premature labour but the child dies during delivery;
- (c) the baby is born prematurely but dies within minutes.

Answer guidance

(a) A foetus is not a reasonable person in being and so the offence will be neither murder nor manslaughter but child destruction under s1 Infant Life Preservation Act 1929 or procuring a miscarriage under s58 OAPA 1861.

(b) If the baby was a reasonable person in being and there was an unbroken chain of causation between D's act and death, D may have committed homicide. The baby will need to have had its own circulation and be capable of existence independent from its mother. Whether the offence is murder or manslaughter will depend on his mens rea. If he had an intent to injure the mother, death of the child will be manslaughter according to *AG's Ref* (No 3 of 1984). It could be murder where his intent was either to kill the mother or, in respect of the child, to commit GBH or death. If the child was not 'in being', the offence will be child destruction under s1 Infant Life Preservation act 1929.

(c) D will have committed homicide where V was clearly a reasonable person in being and causation was satisfied. Again, whether it is murder or manslaughter will depend on mens rea – see (b).

Think box 6.2

1. Did the House of Lords take a moral stand on euthanasia?

2. Was Diane Pretty mentally competent to make the decision to die?

3. If she had wanted to die through starvation would the decision have been different?

Answer guidance

If Mrs. Pretty was held to be competent to refuse nutrition, and it had been withheld, she would have died by omission and committed suicide which is not an offence. Whether her husband would have committed the offence of assisting suicide is doubtful. He would have been guilty of an assault upon her by forcing her to eat against her wishes. If she was judged incompetent, then he may well have committed either murder or assisted suicide.

Think box 6.3

Look at the following and decide whether A is guilty of murder:

1. A punches B intending to break his arm. B falls against a barbed wire fence and incurs a superficial flesh wound to the upper arm. In hospital, B's wound becomes infected. He is resistant to antibiotics and dies some weeks later.
2. A jabs a broken glass in B's face intending to do serious harm. B refuses a potentially lifesaving blood transfusion and dies.
3. A shoots B intending to do serious harm. B receives negligent treatment in hospital and dies two months later.
4. A slaps B around the head intending to do slight harm and causing B to become unconscious. In attempting to conceal his crime, A drags B behind a bush, dropping her. B dies from a fractured skull.

Answer guidance

The last example should be manslaughter by unlawful act, MR being less serious (the intention was to do slight harm) and the harm being accidental. The other three examples all constitute murder on the basis of the more serious MR.

Think box 6.4

Where there is no intent to kill but D is charged with murder, would 'wicked disregard' of life instead of intent to cause GBH be a more satisfactory MR for murder? Can you think of any difficulties with this concept?

Answer guidance

Perhaps this would be as vague as 'malice aforethought' allowing juries to come to different conclusions on irrelevant facts and prejudices such as motive, class, race, sex and age.

Think box 6.5

Can you think of other arguments for and against retention of the mandatory life sentence?

Answer guidance

For: Retribution. Public protection. Moral censure. Public and political popularity.
Against: The definition of murder is much wider than a lot of people imagine.
Therefore, the sentence is unjust. Also, inflexibility but judges can recommend minimum terms of imprisonment. However, Parliament has now taken away much of that discretion. Popular views are simplistic and easily exploited by the media and politicians.