

Chapter 5: Murder

Problem Questions

Below is an example of a problem question and a worked answer. The answer is written in bullet-point form, highlighting how the structure for answering problem questions (discussed in the 'eye on assessment' section of every chapter) can be applied in this area. Remember that when you write your essays, you should use full prose (i.e., not bullet-points).

Dave and Andy belong to the same gang. One night, in retaliation for an attack on their patch, Dave and Andy go out in search of a rival gang member (Fred) in order to kill him. However, seeing the two coming, and realising their intention, Fred grabs Andy and attempts to use him as a human shield to avoid attack. Dave does not want to harm Andy, but realises that if he shoots him there is a small chance that the bullet will pass through his body and kill Fred. Dave even thinks there is a chance that Andy could survive. Dave shoots, killing Andy and Fred.

As Dave returns home, he finds his step-son (Pete) dead. Although Pete had lived alone with Dave for many years, the two had begun to hate each other. In recent months, this culminated in Pete refusing to eat and Dave refusing to feed him. Following medical investigation, it was found that Pete's death resulted from starvation. Dave was aware that Pete could die in this way and is glad he is dead.

Discuss Dave's potential liability for murder.

Introduction: Brief statements introducing topic. As the question is about murder only, this could involve an outline of the offence elements. Also introduction of how we are going to approach the question (e.g., chronologically, victim by victim).

Step 1: The first potential criminal event relates to Dave's (D's) role in the death of Fred.

Step 2: We will assess D's potential liability for murder.

Step 3:

- **Actus reus:** An act or omission causing death.
- In our case it is clear that D's act (shooting) has caused Fred's death. As the actus reus elements are clear, there is no need to discuss these elements in great detail.
- **Mens rea:** Acting with the intention to cause death or GBH.
- Here, again, there are few problems, as it is clear from the facts that D shoots with the direct intention to kill Fred. There is no need to discuss oblique intention. Note,

the fact that D foresees only a small chance of success is irrelevant to a finding of direct (purpose based) intention.

Step 4: There are no likely defences, and therefore no discussion of defences is required.

- The only possibility of a defence arises if D believes that Fred is going to harm Andy, in which case D shooting Fred could be argued as the 'self-defence' of Andy.

Step 5: It is very likely that D will be liable for murder in relation to the death of Fred.

Step 1: The second potential criminal event relates to Dave's role in the death of Andy.

Step 2: We will assess D's potential liability for murder.

Step 3:

- **Actus reus:** An act or omission causing death.
- The same act (shooting) that killed Fred has also killed Andy. Thus, with reference back to the previous discussion, it is clear that the actus reus of murder is also satisfied here.
- **Mens rea:** Acting with the intention to cause death or GBH.
- This time it is unlikely that D is acting with the direct intention to kill Andy or to cause him GBH (Andy is his friend and he would be happy if Andy were to escape harm). However, D does see harm to Andy (shooting through him) as inevitable and so we should consider oblique intention and *Woollin*. Here, it may be that D lacks virtual certainty that his act will cause death (D foresees a chance that Andy will survive), but it is likely that D foresees causing at least GBH as a virtual certainty and so the jury may find the mens rea for murder is made out. If you refer back to the box illustration above (Chapter 5.7), D lacks mens rea (1), (2) and (3), but satisfies (4).
- As an *alternative* way of finding mens rea, we also have the option of using the doctrine of transferred malice. This is because, when D acts to kill Andy, he does so with the intention to kill another person (Fred): this mens rea (malice) could be transferred to Andy to find liability.

Step 4: There are no likely defences, and therefore no discussion of defences is required.

Step 5: It is very likely, employing either approach to finding mens rea, that D will be liable for murder in relation to the death of Andy.

Step 1: The final potential criminal event relates to Dave's role in the death of Pete.

Step 2: We will assess D's potential liability for murder.

Step 3:

- **Actus reus:** An act or omission causing death.
- Pete's death is not caused by any positive acts from D, and so we must consider omissions liability based on D's failure to prevent the death. Murder can be committed by omission. D may have a duty to act based on a familial duty (as Pete's step father) and/or from an assumed duty based on previous care. This requires some discussion of the case law and (ideally) highlighting that we do not know Pete's age: if fully emancipated then it is less likely that D will have a duty. If there is a duty to act, it seems to be breached by D's inactivity (that we know of): we would expect him to feed Pete or at least call for assistance. When considering if this omission caused Pete's death, it would be useful to discuss Pete's refusal as a potential intervening act that could break the chain of causation. However, if we think D's duty extends to calling for help (as opposed to simply offering food), then it does not look as if Pete's refusal to eat will break the chain of causation between *that* omission and its causal effect on the death.
- **Mens rea:** Acting with the intention to cause death or GBH.
- This is one of those occasions where we have to accept a lack of detail: we don't know from the facts whether D omitted with the direct intention to kill or cause GBH (the fact Dave is glad may provide an indication to that effect, but it is hardly conclusive). Logically, if D observed Pete's starvation over time then it is likely that he will have foreseen Pete suffering at least GBH as a virtual certainty, but again, this is not definite.

Step 4: There are no likely defences, and therefore no discussion of defences is required.

Step 5: It is possible that D will be liable for murder in relation to the death of Pete, but there are potential problems finding a duty to act, and particularly to finding mens rea.

Conclusion: A problem question conclusion need only provide a brief overview of potential liability. For example, here it seems that Dave will be liable for the murder of Fred and Andy, and may be liable for the murder of Pete if he is found to have had a duty to act, and to have intended death or GBH.

Essay Questions

There are several areas of interest for essay-type questions in relation to murder. For example, the future structuring of homicide offences (Law Commission), the use of constructive liability, the mens rea for murder, the mandatory life sentence, and so on.

Below is an example of an essay-type question, and a bullet-point plan for a possible answer. This is for illustration purposes only. When writing an essay of this kind yourself, there will usually be alternative ways you could structure your answer, alternative points of discussion that could be raised, and you would certainly be expected to write in full prose (ie, not in bullet-point form). The most important point to take from these plans is how they focus on identifying and discussing the subject of the debate within the question, not simply listing information about the relevant topic.

The current mens rea for murder is inappropriate, and in need of reform.

Discuss.

Introduction:

- Your introduction should make clear that you understand the debate within the question, and inform your reader how you are going to structure your essay to engage with that debate.
- Most importantly, you want to show your reader that you are going to focus on the question, and not simply set out everything you know about murder. The question is asking about the mens rea of murder only, criticisms of the current law, and potential reform.

Body of the essay:

- The clearest structure (and therefore the best structure) for a question of this kind, would be to engage with criticisms of the current law first, and then lead into discussion of potential reforms.

- Criticisms: When discussing criticisms of the law, try to evaluate those criticism as well as simply stating them – think about the weight of the criticism, who is making it, why, would others agree?
 - One criticism of the current law, for example, would be that it allows for constructive liability (ie, D can be liable for murder without foreseeing the chance of causing death). However, you could evaluate this by highlighting that, for others, the fact that D has acted with an intention to cause serious harm (and V has died in fact) means that D is just as blameworthy as if she had foreseen death. This is an area where engagement with academic debates will be particularly useful (eg, that between Lord Goff and Williams, discussed in the reform section of Chapter 5).
- Reform proposals: You should highlight a range of reform proposals linked with the criticisms you previously discussed. For example, if we agree that constructive liability should be avoided, then the mens rea should be reformed to require intention (or at least recklessness) as to causing death in every case. You should then evaluate these potential reforms as you set them out.
 - Where you are aware of Law Commission recommendations, these can be particularly useful. This is because they are generally well considered, and detailed. However, remember that you don't always have to agree with the Commission.

Conclusion:

- The conclusion to an essay of this kind is likely to be forward looking. What reforms, if any, do you think would be best for the law, and why? Then, as a separate question, what reforms (if any) do you think are likely in the future, and why?