

## **Chapter 2: Actus Reus**

### **Problem Question**

It is possible to have a problem question which focuses on actus reus issues only. However, much more likely is a problem question focused on a particular offence or offences, which includes general actus reus issues. For example, where D intentionally starves V to death, the relevant offence is murder, but the main focus of analysis will be the general rules regarding omissions liability as they apply to murder. Any result crime can be used in a similar way, as a vehicle to test your understanding and application of causation rules. Thus, also 'specific' actus reus problem questions are extremely rare, a good knowledge of actus reus rules and their application is essential for all problem questions.

### **Essay Question**

There are several areas within the topic 'actus reus' where essay questions could focus. For example, discussing current approaches to omissions, to the causation rules, etc.

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 (i.e., 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.

"As to causation ... there are no principles. Judges often use one of the general terms, saying that the defendant's act must have been the 'efficient' or 'direct' or 'proximate' or 'substantial' cause of the result, or that the result must not have been too 'remote.' This vague and metaphorical language generally fails to yield any basis of prediction in other cases."

Discuss this statement by Glanville Williams (*Textbook of Criminal Law*, 1978) in the context of the current legal rules on causation.

### **Introduction:**

- It is generally useful to start with an acknowledgement of the topic and the debate. Here, this is the question whether causation is governed by rules.
- It is also useful to give some indication about how you are going to answer the question. For example, are you going to explore each of the possible 'principles' in turn, are you going to structure your essay around the academic debate, etc.

### **Body of the essay:**

- In order to answer the question, whether causation is governed by principles, you need to have some discussion of what 'principles' are. This term is sufficiently vague to require definition. As Williams uses it in the quotation, the term 'principles' is intended to mean a set of rules that guide judges to a legal outcome (i.e., as opposed to judges deciding an outcome and then looking for justification).
- It is useful to now think about what 'principles' might exist, and use them to test Williams' statement. In simple terms:
  - There *are* principles – here are some cases that seem to be principle led, even some where the judges seem to prefer the alternative outcome but claim to be bound by principles. Examples of this include the finding of a break in causation in *Kennedy No2*.
  - There are *no* principles – there are terms that look like principles, but judges get to choose between them to find the one they want for the result they want. The principles are contradictory.

### **Conclusion:**

- You may conclude in line with one side of the debate or the other (i.e., there are/are not principles).
- Or you may find a third way. For example, you could argue here that there are principles, but they are not general principles that apply to all cases. Rather, principles seem to exist locally within categories of offence and/or defendant (e.g., the rules governing the potentially intervening acts of doctors).