

Chapter 4: Interaction of actus reus and mens rea

Problem Questions

It is extremely unusual for a problem question to focus on the issues discussed in this chapter unrelated to a particular offence. Rather, when applying offences (discussed in later chapters) to problem facts, it is important to do so in the light of the issues discussed here. So, for example, you should always take care to ensure that you look for D's mens rea to be present at the time she completes the conduct element of the offence. If it is present at that time then there is no need to discuss issues of coincidence in any detail. However, if it does not appear to be present, it is then that you should consider the more creative ways in which courts have sought to find coincidence.

Below is an example of a question that involves issues of coincidence.

Angela is unhappy with Tony, and decides to kill him. She puts a lethal dose of cyanide in his coffee, and after drinking it, he collapses. Convinced that he is dead, Angela throws Tony's 'corpse' into a river.

In fact Tony is alive, and revives as he enters the water. He calls for help, and Angela stands by the river watching as he drowns. Tony dies.

A passer-by, Tanya, sees Angela standing by doing nothing, and threatens to call the police. Angela struggles with Tanya, striking her a powerful blow across the head, and knocking her into the river. Tanya is an excellent swimmer, but has a severe, and extremely unusual allergy to pond-weed. Tanya swallows some pond-weed while in the river, and dies from the reaction.

Discuss Angela's potential liability.

Introduction: Your introduction should briefly introduce the topic, homicide offences, making it clear that you understand what the issues in the question involve. You should then indicate how you are going to structure your answer. Here it makes sense to take each potential criminal event chronologically as they arise.

Step 1: The first potential criminal event relates to Angela's (A's) role in the death of Tony.

Step 2: We will assess A's potential liability for the offence of murder (as the most serious potential offence).

Step 3:

- You should make it clear that you understand the actus reus and mens rea of murder (unlawful killing of a person under the Queen's Peace, with an intention to kill or cause serious bodily harm). However, the challenge with this question is to identify and explain the alternative routes to finding liability, and to do so without confusing them.
 - Single transaction: Although the poisoning is done with an intention to kill (MR), this is not the most direct cause of death (no AR); and whilst throwing V into the river causes death (AR), this is not done with an intention to kill or cause GBH (no MR). However, if we link these two acts together, then we have conduct causing death (AR) and we have coincidence between this transaction and an intention to kill (MR). See *Thabo Meli*.
 - Causation approach: It could be argued that D's original act of poisoning is causally linked to V's death, and so there is no need for the transaction approach to be used. This approach is discussed in *Le Brun*, and by academics.
 - Omissions approach: The final option, since D became aware that V was drowning, would be to focus on her omission at this point. She clearly has a duty to act (creating a dangerous situation), there is a breach, and causation; it is also pretty clear that she intends her omission to cause death (after all, she fights off a 3rd party to prevent them getting help).
- Having identified the three options, you should indicate which you think a court are more likely to apply.

Step 4: There are no likely defences applicable.

Step 5: It is likely that A will therefore be liable for murder.

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

Step 2: Again, the most serious potential offence is murder.

Step 3:

- **Actus reus:** A's conduct must have caused Tanya's death.
- This is quite clear on the facts. It should be highlighted that Tanya's allergy will not break the chain of causation. "Take your victim as you find her".
- **Mens rea:** A must have intended to kill or to cause serious bodily harm.
- This is not clear on the facts, but certainly possible given the 'powerful blow' to the head.
- As A's mens rea for murder is unclear, you should also consider her potential liability if it is lacking. This can be done relatively briefly (although if it were clear that mens rea was lacking, it should be fully explored)
 - A's alternative liability would be for manslaughter, through one of the involuntary manslaughter offences.
 - Unlawful Act Manslaughter – crime (e.g., battery); objectively dangerous; causing death – clear on the facts
 - Reckless manslaughter – also likely on the facts.

Step 4: There are no likely defences applicable.

Step 5: It is likely that A will therefore be liable for murder.

Conclusion: The conclusion for this question can be quite brief. You simply need to summarise that liability for murder is likely in relation to both victims.

Essay Questions

There are several areas of interest for essay-type questions in relation to the interaction of actus reus and mens rea. For example, the role of mens rea and the problems with

constructive and strict liability, the desirability of a doctrine of transferred malice, the role of coincidence and the techniques used by courts to find it, 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 (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.

Transferred malice is a 'legal fiction'. How could, and how should, this fiction be rationalised within the current law?

Introduction:

- The main role for an introduction of an essay question is to make it clear that you understand the debate that the question is engaging with, and that you tell your reader how you are going to set out your essay.
- So, for this question, the debate is about the potential rationalisation of transferred malice as a legal fiction. As the terms 'transferred malice' and 'legal fiction' are not straightforward ones, your introduction should also make clear how you are interpreting them for the purposes of the essay.

Body of the essay:

- The body of your essay needs to set out and analyse the debate surrounding transferred malice. In this regard, there are three main schools of thought, and this would give an ideal structure for your essay.
- 1st – A number of academics contend that transferred malice is a legal fiction (ie, the law creates a rule that redirects D's mens rea), but that this is necessary to

achieve a form of 'rough justice'. In this regard, if the aim of the law is to accord with moral intuitions, there is nothing that requires rationalisation or change.

- 2nd – Others argue that transferred malice, as a legal fiction, should be abolished. They highlight that although it achieves something of a rough justice, that justice would be better served by criminalising D for what she has actually done: in most cases an attempt offence, and possibly some kind of negligence offence.
- 3rd – A middle ground is to accept some form of transferred malice, but to define it more narrowly so that it only applies to a smaller class of deserving cases.

Conclusion:

- Within your conclusion you can do two things. First, you can make it clear on which side of the debate you think the most convincing arguments lay. This should be obvious from your discussion, but is useful to state in plain terms within your conclusion to be sure. Secondly, you may look forward to which of the approaches you think is most likely to be followed in the future – this may be the same as your preferred approach, but may also be different. The question does not explicitly ask for this second issue to be addressed, but the conclusion of an essay is often a good place to look forward from the focus of your essay to engage with likely futures for the law.