## Thinking Point 2.1

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| 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? |

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* AR of murder. D may have a defence of automatism in respect of the hypnosis and/or the slip. If voluntariness is lacking, the AR may not have been committed and D cannot be convicted
* Does MR coincide in time with AR? The continuing act exception may apply on the basis that D sets in train a series of events during which a further act/omission is committed. (*Thabo Meli, Fagan, Le Brun* and *Church*) This appears to be both conscious and intended (MR). However, here, 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.
* Note though that the courts will probably prefer the ‘duty’ principle under the case of *Miller*.
* 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.

## Thinking Point 2.2

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| 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/lifeguard/neighbour/mother’s cohabitee/relative by marriage (such as a stepbrother or uncle)/cousin/baby-sitter/teacher/stranger. |

* 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.
* *Stone & Dobinson* covered blood relatives (mother) and assumption of responsibility (any of the others who may have assumed responsibility for the child. The lifeguard has a contractual duty (*Pittwood*).
* Note however the arguments in the text regarding the vagueness of the Stone categories.

## Thinking point 2.3

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| Do you think a duty should exist between drug suppliers and users? |

* The first question is a matter of opinion and the circumstances. 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.

What is the difference, if any, between *Khan* and *Stone & Dobinson*?

* This 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? The creation of a duty is a fluid concept which can differ greatly between cases. For a recent example of this, see the discussion of *R v Bowditch* (Chapter 2, Note 2.3)

## Thinking point 2.4

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| 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?  * F could be charged with s1 Children and Young Persons Act 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. One would hope that F would not today be charged with manslaughter but see the next question.   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? |

* + 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.

## Thinking point 2.5

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| 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.   * Have D or Z committed an offence? * 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 Lord 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.   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? |

* 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, 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.
* 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.

## Thinking point 2.6

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| 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   * 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 sea.   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 dies?   * If the breathing difficulties accelerated death, even though the injuries were not life-threatening, then D caused it. * D’s acts need not be the sole or main cause of death provided they contribute to it in a significant way   3. In a gun battle between a group of robbers and police, an officer is killed by a police bullet? |

* 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*).

## Thinking point 2.7

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| 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.  * Not if the two acts are unconnected. 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. (*Dear* & *Blaue*).  1. D has a violent argument with V who runs away and falls into a gutter. He is struck by a passing car and killed.  * Yes. 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.  1. D injures V’s finger. A surgeon advises amputation but V refuses and dies two weeks later from infection.  * Yes. This will not break the chain, no matter how abnormal/unforeseeable: *Blaue*. |