## Thinking point 4.1

D administers poison to a pregnant woman. What offence has D committed in the following cases?

Her unborn child dies:

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

She goes into premature labour, but the child dies during delivery

* If the baby was a reasonable person in being (own circulation and capable of existence independent from its mother) and there was an unbroken chain of causation between D’s act and death, D may have committed homicide.
* 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.

The baby is born prematurely but dies within minutes.

* 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).

## Thinking point 4.2

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

* It can be argued that the court took a moral stand – part of the decision of the court was based on the fact that there is a need to protect the vulnerable.
* On the other hand it can be argued that a mentally competent person (see below) should be able to make decisions which affect their well-being.

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

Yes – however see the next question.

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

* 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

## Thinking point 4.3

Do you think Parliament should change the law so that the courts will stop regarding ‘mercy’ killing as murder?

* This is a matter of personal opinion, however you may want to take account of the following
* The courts have been reluctant to change the law in order to protect the vulnerable from exploitation (the slippery slope argument).
* An alternative view is that based on autonomy and the right to self-determination. The state should not interfere with an individual’s choice in this matter. Recent case law has continued to follow the first approach (see Chapter 4.1.3). The decision to prosecute may also help in these cases.

## Thinking point 4.4

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. B is resistant to antibiotics and dies some weeks later.

Yes. Intention to do grievous bodily harm is sufficient for murder (Vickers). The Blaue rule will apply on causation.

1. A jabs a broken glass in B’s face intending to do serious harm. B refuses a potentially life-saving blood transfusion and dies.

Yes – as above on both counts.

3. A shoots B intending to do serious harm. B receives negligent treatment in hospital and dies two months later.

Yes. Smith and Cheshire make it clear that the defendant has caused the death notwithstanding negligent medical treatment and there is an intention to do serious harm, which is sufficient mens rea for murder.

4. A slaps B around the head intending to do slight harm and causing B to become unconscious. In attempting to conceal the crime, A drags B behind a bush, dropping her. B dies from a fractured skull.

In this example there is not enough intention for murder. The intention was to do slight harm and the harm was accidental. The charge should be involuntary manslaughter (by an unlawful and dangerous act).

## Thinking point 4.5

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

* Perhaps this would be as vague as ‘malice aforethought’
* It might allow juries to come to different conclusions on irrelevant facts and prejudices such as motive, class, race, sex and age.

## Thinking point 4.6

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

* Arguments for: retribution/public protection/moral censure/public and political popularity.
* Arguments 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.

## Thinking point 4.7

Consider whether the following fall within the definition of s2:

1. A has been physically and mentally abused for several months by her husband B. She has become extremely depressed. One night she stabs and kills B.
2. A hears voices which tell him to kill his neighbours. A does so.
3. A becomes depressed when his girlfriend, B, leaves him for another man. After one week, A kills B.
4. A suffers from a depressive condition causing him to become aggressive. He gets into an argument with B over some tools which he accuses B of having stolen. The argument becomes heated and A stabs and kills B.
5. A’s terminally ill wife has suffered great pain and discomfort for a prolonged period. A has become depressed and kills her wife by suffocation.

* For each question, follow IRAC:
* Issue: does A have a defence of diminished responsibility under s2?
* Rule: diminished responsibility requires:
* a recognised medical condition
* amounting to an abnormality of mental functioning
* which substantially impaired her ability to understand the nature of what she was doing, to be rational, and/or to exercise self-control
* and which provides an explanation for D’s killing.
* Check:
  + Is there likely to be a recognised medical condition?
  + Is the impairment substantial?
  + Is there a causative link between the abnormality of mental functioning and the killing?

## Thinking point 4.8

1. Ahmed suspected that his wife, Sophia, was conducting an affair with his best friend, Brian. One day, he found them together and Sophia confessed to Ahmed that the child of their marriage was Brian’s. Ahmed immediately strangled Brian to death.

Would the defence of loss of control apply? Give reasons for your answer.

* Issue: does A have a defence under ss54/55 C&JA 2009?
* Rule: A must have
  + Loss of self-control
  + Qualifying trigger
  + Person of D’s age/sex with normal degree of tolerance and self-restraint might have reacted in same way
  + Qualifying trigger: things said or done of extremely grave character causing A justifiable sense of being seriously wronged.
  + Fact that a thing said/done constituted sexual infidelity is to be disregarded.
  + *Clinton*: sexual infidelity itself to be disregarded but surrounding circumstances e.g. taunted/humiliation can still be a qualifying trigger.
* Hint for application: following *Clinton*, is the child’s parentage separate from the sexual infidelity?

2. Anne and Bill lived together for eight months. Bill frequently punched and threatened her. One day, she told him she was going out. He said that she could only go out with him and that if she tried to leave on her own, she would get what was coming to her. The next evening, Anne stabbed Bill repeatedly with a knife as he lay sleeping in a drunken stupor on the settee. He died in hospital the next day.

a. What offence/s might Anne have committed?

* Murder

b. Did Anne have the mens rea for the offence?

* MR = intention to kill or seriously injure.
* Given multiple stabbing, she appears to have direct intention.

c. Does Anne have a defence?

* Consider loss of self-control (qualifying trigger: fear of serious violence)
* Why is self-defence not available?

d. What difficulties will Anne face in arguing any defence and how might she overcome them?

* What effect will the delay have?
* Is there any other evidence which might be argued to suggest a considered desire for revenge?

## Thinking point 4.9

Consider whether the following characteristics are relevant to either D’s capacity for tolerance/self-restraint or the gravity of V’s words or conduct. Comment on their relevance in relation to the objective test under s54(1)(c) C&JA 2009.

1. Dan has a hot-tempered and jealous disposition. When his girlfriend, Eileen, attempts to leave him one day, he strangles her.

* These characteristics relate to Dan’s capacity for tolerance and self-restraint
* They are therefore excluded by s54(1)(c) and s54(3).

1. Yolanda is 16 and kills an older man with whom she has a relationship because he wishes to force her into prostitution.

* S54 allows sex and age to be taken into account.

1. Nigel, an alcoholic, thinks all Asians are terrorists. Mohammed calls him a racist pig. Nigel then throws a petrol bomb through Mohammed’s window and Mohammed is killed in the fire.

* Mohammed’s comment is not addressed to Nigel’s alcoholism or racism.
* These characteristics are therefore only relevant to his capacity for self-restraint and will be excluded.
* S55(6)(c) will also apply: Nigel may have unjustifiably incited Mohammed’s comment.

1. Zohra has an attention-seeking personality and self-harms. She kills her boyfriend when he threatens her with a gang rape.

* These characteristics relate to her capacity for tolerance and self-restraint and would be excluded.

1. Delia is dyslexic and cannot read very well. Her boyfriend taunts her about it frequently. One night in desperation, Delia stabs him with a pair of scissors.
   * Since Delia’s dyslexia is the target of her boyfriend’s taunting, it is relevant to the gravity of his conduct and will be included.
2. Look at the question on Anne and Bill at the end of section 4.8.4. Suppose that as a consequence of Bill’s violence, Anne became anxiety ridden, nervous, depressed and suffered from insomnia. What other defence might Anne plead?

* PTSD will continue to be relevant to the objective test although it does not fit within it very well.
* The other defence is diminished responsibility.