# Chapter 2

## Questions

1. D is driving his 15-year-old daughter, A, to school. As D approaches the school crossing. A, who loves to make her father laugh, suddenly tickles D under his arm. He loses control of the steering wheel, and the car rolls on to the foot of the lollipop man. D dislikes the man and leaves the car there for a couple of minutes whilst he scolds A. Is this a criminal act?
2. The following week, D’s wife gives birth to a baby. The baby becomes critically ill. After several days the baby’s heart stops beating. The doctors do not resuscitate and withdraw artificial nutrition and hydration on the basis that the baby is never going to recover. Is there a duty of care giving rise to a criminal omission?
3. That night A threatens V, her unusually nervous 9-year-old brother, by breaking into his room and shouting. V jumps out of an upper window and breaks his arm. He is taken to hospital where a junior doctor fails to detect the complexity of the break. The arm is not set properly. It fails to heal, and V dies from an infection. Has A caused V’s death?

## Answer guidance for Question 1:

### Key Issues

* Identify the offence – common assault.
* Voluntariness
* Coincidence of AR and MR
* Omissions and duty to act

### Key Law

You will find the relevant legal rules in

* Common law definition of assault (Chapter 2, section 2.1.2)
* Voluntariness (Chapter 2, section 2.5)
* Coincidence of AR and MR – see *Church*, *Le Brun* and *Fagan* (Chapter 2, section 2.5)
* *Miller* duty principle (Chapter 2, section 2.2.3)

### Hints

* Remember that AR is a voluntary act or omission - if you cannot establish voluntariness, then there is no AR.
* Is the rolling car an omission? Remember that there must be a duty to act
* Coincidence – though note here you are only asked to establish a criminal act. Think about how the courts would approach coincidence of AR and MR (continuing act theory).

## Answer guidance for question 2

### Key Issues

* Identify the offence: murder by omission
* Duty to act/the ‘best interests’ argument

### Key Law

You will find the relevant law in

* Duty to act (see *Bland*) Chapter 2, 2.2.3

### Hint

* Look at the reasoning in Bland for the imposition of a duty. The provisions of the ECHR may be relevant here.

## Answer guidance for question 3

### Key Issues

* Identify the offence - murder
* Causation: novus actus interveniens – acts of a third party, negligent medical treatment and victim’s own actions – do these break the chain of causation? An intervention in the course of duty will not be voluntary. D must take their victim as they find them

### Key Law

You will find the relevant law in:

* Murder – see definition (Chapter 4, section 4.1)
* Principles of legal causation (all in Chapter 2, section 2.3). *Pagett*, *Smith*, *Cheshire*. Unreasonable escape – *Roberts/Williams*. *Blaue* – the thin skull rule

### Hints

* Is the chain of causation between D’s assault and V’s death broken by the medical negligence or by V’s reaction? Use the case law carefully and decide if it should be applied or can be distinguished.
* Note that you are not asked to cover MR.