

Chapter 6: Manslaughter

Problem Questions

Below is an example of a problem question and a worked answer. The answer is written in bullet-point form, highlighting how the structure for answering problem questions (discussed in the 'eye on assessment' section of every chapter) can be applied in this area. Remember that when you write your essays, you should use full prose (i.e., not bullet-points).

Amir and Penny have lived together for 8 years, but their relationship has just ended, after Amir met Lucy at work. Penny has left their home, leaving Amir to look after their two year old child, Dennis. Since leaving she has been feeling very low and has been having difficulties concentrating at work.

One day she returns to collect some belongings from the house, and to discuss some financial matters with Amir. She is furious to find Lucy's belongings in the house, and a mother's day card from Dennis to Lucy on the mantelpiece. A row breaks out between Penny and Amir, and Amir tells her that he could no longer tolerate her mood swings and her untidy habits, and that Dennis is better off thinking of Lucy as his mother.

Penny leaves the house in tears and goes off to try to find Lucy, taking a knife with her. She goes to several places where she thinks Lucy might be, and eventually finds her, after about an hour, outside her office. When she sees Lucy, she runs towards her, stabbing her in the leg. Lucy dies.

Discuss Penny's potential criminal liability for the death of Lucy.

Introduction: A brief introduction should be used here to highlight that you understand the focus of the question – homicide offences – and to tell your reader how you are going to set out your answer. As there is only one potential criminal event in this question, this will be your sole focus.

Step 1: The only potential criminal event within the problem facts relates to Penny's (P's) role in the death of Lucy.

Step 2: As death is caused, the most serious potential offence is murder.

Step 3:

- **Actus reus:** Does P's conduct cause the death of Lucy?

- This seems quite clear on the facts, with death resulting from the stabbing.
- **Mens rea:** Does P stab Lucy with an intention to kill or to cause serious bodily harm?
- Although it is not clear that P intended to kill Lucy, it is likely that her intention to stab Lucy in the leg (in such a way that resulted in death) amounted to an intention to at least cause serious bodily harm.

Step 4:

- There does not appear to be any relevant complete defences. P is not, for example, acting in self-defence.
- There may, however, be a case for one of the partial defences and so these should be discussed in full.
- Loss of control:
 - Was there a loss of control in fact? This is far from clear on the facts. She is clearly very angry, and the current law does not require loss of control to be sudden and temporary, but her lengthy search for Lucy would be evidence towards a revenge attack rather than one where P lost control.
 - Was there a qualifying trigger? Certain potential triggers should be disregarded, for example, any infidelity between Amir and Lucy and any minor issues such as Amir's complaints about untidiness. However, it is possible that a case could be made that P had a justifiable sense of being seriously wronged when Amir told her that their son should not think of her as his mother. The question is whether this statement was what caused her to lose control.
 - Might a reasonable person have responded as P did? This is an open factual question, but also provides space for you to comment on some uncertainty within the law about which of P's characteristics can be taken into account here. For example, if her 'feeling very low' amounts to depression, can this be taken into account?

- Diminished responsibility: We only know that P has been feeling 'very low', but the possibility that this might amount to clinical depression should lead you to discuss (at least briefly) the possibility of a diminished responsibility defence.

Step 5: You can conclude here whether you think D is likely to be liable for murder (i.e., that neither partial defence will apply), or whether she is likely to be liable for manslaughter. Remember to highlight which element of the defences, if any, you think is lacking.

Conclusion: As you have just concluded in relation to the sole criminal event, it would not make sense to simply repeat yourself here. In this case, you may simply omit a general conclusion altogether, or you could take the opportunity to comment on the law that you have applied. For example, do you think that the outcome was clear, was fair? Remember that this is not the focus of the question and so any comments of this kind should be brief, but they can be useful to demonstrate wider knowledge.

Essay Questions

There are several areas of interest for essay-type questions in relation to manslaughter. For example, the future structuring of homicide offences (Law Commission), the use of constructive liability, the role of partial defences in relation to abused women and more generally, emerging problems in relation to sexual infidelity and loss of control, 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 (ie, not in bullet-point form). The most important point to take from these plans is how they focus on identifying and discussing the debate within the question, not simply listing information about the relevant topic.

One of the reasons for replacing the partial defence of provocation with the partial defence of loss of control was to eliminate anger arising from a partner's sexual infidelity as a ground for reducing murder to manslaughter.
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Does the loss of control partial defence succeed in this?

Introduction:

- You introduction should make clear that you understand the focus of the debate within the question – that you are exploring the sexual infidelity exception and not simply telling your reader about loss of control.
- You should then say how you are going to structure your essay. For example, looking at how the reform has achieved its aims, and then how it has come up short.

Body of the essay:

- As with all essays, you are looking for a structure that engages clearly with the debate within the essay title.
- This essay could be structured in a number of different ways. One possibility would be to explore the debate as it has changed over the short life of the Coroners and Justice Act 2009.
 - The 2009 Act is clearly intended to exclude sexual infidelity as a qualifying trigger, and it seems (on plain reading of the statute) to do so. Section 54 requires a justifiable sense of being seriously wronged – this can reduce the chances of such anger qualifying. But more importantly, section 55(6)(c) explicitly disregards sexual infidelity.
 - Despite these clear ambitions, however, there was early academic scepticism about how the law would be applied. This concern was proved accurate in the case of *Clinton*, where it was held that if sexual infidelity was mixed with other aspects/triggers then it would not be discounted. This decision, its rationale, and its merits, should be discussed in detail.
 - Post-Clinton it is now often said that sexual infidelity can be a qualifying trigger, and the exclusion has been undermined. However, this kind of absolute statement should be questioned. For example, we still have the

general objective requirement that a trigger must provide a justifiable sense of being seriously wronged. Additionally, we still have the specific provision on sexual infidelity which, even if it fails as the total exclusion intended, is likely to make courts more cautious about allowing this kind of trigger.

Conclusion:

- Your conclusion should be used to sum-up the debate within your essay – saying clearly whether (and to what extent) you believe the exclusion is effective within the current law.
- Conclusions can also be useful to briefly expand your discussion beyond the question, and to demonstrate wider knowledge. There are at least two ways you could do this within this question:
 - You could look to the future, predicting how you think future courts will interpret and apply the exclusion;
 - Alternatively, you could use this space to briefly question why we have the exclusion in the first place. Where D kills having lost control, the reason for that loss of control will rarely reflect well on her, so why single out sexual infidelity for specific exclusion. If the rationale for the exclusion is unconvincing, perhaps this is why the courts have not strictly applied it.