

# Criminal Law

## **Solving case problems**

# General issues

**Case problems in criminal law tend to be complicated because of the constant intermingling of general principles and specific offence-related issues.**

# General issues

Criminal cases also require a very close reading and analysis of the underlying facts, because often one will need to make inferences in the absence of clear facts.

# Precision

- You will have to read the text very carefully and not make any additions to it in your answer.
- You will need to learn to separate relevant from irrelevant facts.

# General issues

It is therefore necessary to adapt a clinical approach to analysing the law and the facts.

The analysis is mechanical, your written answer can but need not be that way.

**Style is of secondary importance.**

# General issues

- Do not add **introductions and conclusions** to the essay – they are a waste of word count. Go straight to the offence examination.
- You **CANNOT** apply the discursive essay-writing technique you used in Sixth Form.
- Nor is a problem question an essay about telling the reader the theory – it is about **applying theory to practice.**

# Presentation tips

- Use academic language register.
- Try to avoid “I” or “we” style.
- Do not use colloquialisms.
- Do not use forms such as “isn’t”, “should’ve” etc.
- Do not give us a mini intro to each offence examination.
- Do not say “the next issue is” etc. all the time.
- Do not tell us that you need to establish both actus reus and mens rea for each offence.
- Do not hide behind the jury – make up your mind where you can and stick with it.
- Avoid words such as “likely”, “clearly” etc.

# General issues

**HEALTH WARNING**

**Waffling is lethal!**



# General issues

**USE (NUMBERED) SUB-HEADINGS AT  
LEAST FOR EACH  
OFFENCE/DEFENDANT!**

**MAKE THE OCCASIONAL DOUBLE  
RETURN...**

# General issues

- The basis of the analysis is the offence definition. i.e. actus reus and mens rea.
- You always start with a specific offence, naming the exact section, sub-section, no., alternative etc. ⇔ Don't examine several offences at the same time.
- You then name the facts that are meant to support the offence.
- Then you start the subsumption (next slide) by telling us what the relevant offence elements are, and which facts bear them out.
- Tip: Always start with the most serious offence that may be applicable – saves time, more elegant.
- Only the offence description will tell you which facts are relevant for the solution of the problem.
- This also applies to other issues of the general part such as defences.

# General issues

- The process of assigning facts to legal concepts is sometimes also called “subsumption”. You subsume the facts under the legal criteria of the offence description.
- It is mostly wrong and always risky to jump to a juicy problem ahead of the clinical next step. The example below is a case in point.
- Repeating the facts from the question over and over again is not an argument.

# General issues

Exam tactics also dictate that you don't kill a long problem question because you see that at the end the offender may have a defence anyway if there are dozens of problems in the actus reus and mens rea – you will also not know if the defence is relevant unless you check AR and MR of the relevant offences.

# Problem

- The following problem case is meant to get you accustomed to the approach.
- We will do this without reference to case law so as not to overload the educational exercise, but in your exam, you are, of course, required to mention the authorities on which you rely.
- NB: If we tell you not to use footnotes – do not use footnotes!

# Case problem

A (21) and B (22) have been best of friends since their childhood days. They have spent almost every free minute together and shared everything. During a vacation in 2008, A meets V (20) and the two fall in love. Some weeks later, an overjoyed A introduces V to B. B is also immediately smitten with V. B quickly becomes jealous of A and at the same time starts to hate V because V is taking A away from him. V notices both and goads B by kissing A passionately in front of B and then grinning at him mockingly. B is infuriated and humiliated and – barely able to restrain himself – walks away.

# Case Problem

B, who has never had any other friends, develops serious eating and sleeping disorders and suffers from deep-seated anxiety and loneliness which increasingly affect his judgment. The reasons for this are both his hopeless love for V and the sting of the humiliation suffered at her hands earlier.

B decides to end the trouble by taking out the root of the problem, V. B hopes that once V is gone, A will come back and revive their old friendship.

# Case Problem

One Friday night, when B knows that A is away and V will be attending a large party, B goes to the party, too. At the party, B slips a slow-acting poison into V's drink. V drinks from it and soon becomes unwell. V leaves the party at 2 am and decides to drive to the A & E clinic of the nearby hospital. B follows V's car to see how things progress.



# Case Problem

Because V is becoming increasingly ill, she does not notice T's car careening around a bend and collides with it. T was running amok and wanted to crash her vehicle into the next best car to end her life. Had V not been so ill, she would have had sufficient time to avoid T. T dies in the crash. V suffers a concussion and is bleeding seriously from an open fracture of the shinbone in her right leg. She drags herself out of the wreck of her car and starts to crawl away from the road.

# Case Problem

At that moment, a police car stops at the scene and officer P gets out to help V. P correctly realises that unless she is taken to a hospital, she will die from blood loss within an hour. He prepares to put her in the patrol car when a call comes through on his radio ordering him to go immediately to a nearby house where a domestic dispute is in progress. P is the only police officer in the vicinity and his dispatcher tells him that the husband H is threatening to kill his wife and eleven children by setting fire to the family home after locking them up in the basement. P is told that the situation is quickly getting out of control and that there is no time to lose.

# Case Problem

P weighs up the number of lives involved and reluctantly leaves V at the scene of the accident and drives to the house. He comes too late, and the wife and children die in the blaze caused by H.

# Case Problem

B has witnessed P's departure and waits next to the now unconscious V until she is dead. All the time he had a pistol in his hand to shoot her, should she wake up and recognise him.

Advise **B** who is charged with **murder**.

# Preliminary Note

Only B's liability and only for murder is asked for. Not P's or B's for any other offence. ⇔ **Read the instructions very carefully!**

If you are asked only about a specific offence, **lesser included offences** should not be addressed as you do not know whether procedurally they may go to the jury in a real case.

# Hypothesis

***B could be guilty of murdering V***

- ***by putting a slow-acting poison into her glass,***
- ***which caused her to drive to the hospital and***
- ***got her involved in the accident***
- ***as a consequence of which she may have died.***

# Offence elements

- Murder is a **common law offence** and defined as causing the death of another person with malice aforethought under the King's peace. (Don't use the full definition as in Coke's Institutes – word count!)
- **NB:** The Homicide Act 1957 does NOT define murder; it presupposes the existence of the common law definition.

# Actus reus

- Causing the death of another person under the Kings's Peace.
- As long as there is no state of war etc., all events in case problems happen under the King's Peace.



# Actus reus

- Has B caused V's death?
- B has caused V's death if he set a condition but for the existence of which V would not have died.
- Has the poison caused V's death?

# Actus reus

- The text tells us nothing of the actual cause of V's death.
- She could have died from the poison if it was lethal before sufficient blood loss occurred. We don't know that the poison was lethal.
- She could have died from blood loss before the poison administered by B took full effect, if it was lethal. We don't know that, either.

# Actus reus

- B will be liable for causing V's death if he is causally responsible in both alternatives.
- **If V died from the poison**, B has caused her death as he administered it, unless the chain of causation was broken by subsequent events.
- **If V died from blood loss**, B will be causally responsible if the blood loss from the accident was related to his putting poison in V's glass. This will be the case if the poison was still an operating cause at the time of death ( $\Leftrightarrow$  again the causal chain must not be broken).

# Actus reus

- We thus need to look at the chain of events after the poison was administered.
- NB Whether **B** knew or had reason to know any of the following is irrelevant for the question of causation.

# Causation

- **V left the party to go to the hospital because she felt unwell.**

# Causation

- This act is still caused by the poison. The fact that V herself decides to get help is a natural consequence of feeling ill and can objectively be expected as a matter of general experience.

# Causation

- **T's running amok that resulted in the accident**

# Causation

- T may have caused a ***novus actus interveniens*** if she acted in a ***free, deliberate and informed*** manner. This may be questionable, because T wanted to kill herself which might be sufficient reason to doubt this.
- However, even if one wanted to accept that T acted in such a manner, her action will not break the causal chain as long as the original cause, the poison, still contributed to the result. The text tells us that but for the sickness caused by the poison, V would have been able to avoid T.



# Causation

- T has thus not broken the chain set in motion by B.

# Causation

- **P's abandoning V at the scene of the accident**

# Causation

P's conduct is best classified as an omission.

Regardless of whether P had a duty to act, an omission cannot break a causal chain because for purposes of causality it is a *nullum*.

Even if one accepted P's omission as a causal factor, the poison would still be an operational cause. It does not have to be the only one. Whether P's decision was free, deliberate and informed (P gets ordered away/necessity) is thus irrelevant.

# Exam tactics

- Exam questions can and will test your ability to sift out the relevant facts from the text and discard the others.

# Causation

- P has not broken the causal chain started by B.
- As there are no other conditions that could intervene, B has caused V's death.
- The actus reus of murder is fulfilled

# Mens rea

- Murder requires malice aforethought.
- This is either
  - an intention to kill or
  - an intention to cause grievous bodily harm.

# Mens rea

- We do not know whether B wanted to kill V.
- The text only talks about “taking out the root of the problem” and making V go away.
- Combined with the fact that we don’t know whether the poison was lethal, we cannot infer that B intended V to die; B may just have wanted her to become permanently and seriously ill, in the hope that that would douse A’s interest in V ⇔ ***in dubio pro reo.***

# Mens rea

- **NB** A lengthy debate about virtual certainty (*Woollin*) etc. would be misplaced here. It is irrelevant because even *Woollin* would not apply.



# Mens rea

- Did B intend to cause V grievous, i.e., serious bodily harm?
- The effects caused by poisoning can be seen as serious bodily harm if they reach a certain level. Given what we just said, B must at least have wanted V to become permanently ill because otherwise she would not “go away” – she would recuperate soon, and everything would be as it had been.

# Mens rea

- Thus, B by necessary inference had the intention to cause her grievous bodily harm.
- The fact that **death** occurred and especially the actual causal chain, does not need to be covered by B's mens rea, as the liability for the result is constructive.
- The mens rea for murder is fulfilled.

# Defences

- B may be able to plead:
  - Loss of control or
  - Diminished responsibility

# Defences

- Both are partial defences **ONLY** to murder and reduce the offence to one of voluntary manslaughter.

# Defences

## **S. 54 CJA 2009: loss of control.**

- (1) Where a person (“D”) kills or is a party to the killing of another (“V”), D is not to be convicted of murder if—
  - (a) D's acts and omissions in doing or being a party to the killing resulted from D's loss of self-control,
  - (b) the loss of self-control had a qualifying trigger, and
  - (c) a person of D's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D.
- (2) For the purposes of subsection (1)(a), it does not matter whether or not the loss of control was sudden.
- (3) In subsection (1)(c) the reference to “the circumstances of D” is a reference to all of D's circumstances other than those whose only relevance to D's conduct is that they bear on D's general capacity for tolerance or self-restraint.
- (4) Subsection (1) does not apply if, in doing or being a party to the killing, D acted in a considered desire for revenge.

# Defences

## **S 55 CJA 2009 Meaning of “qualifying trigger”**

- (1) This section applies for the purposes of section 54.
- (2) A loss of self-control had a qualifying trigger if subsection (3), (4) or (5) applies.
- (3) This subsection applies if D's loss of self-control was attributable to D's **fear of serious violence** from V against D or another identified person.
- (4) This subsection applies if D's loss of self-control was attributable to a **thing or things done or said** (or both) which—
  - (a) constituted **circumstances of an extremely grave character**, and
  - (b) caused D to have a **justifiable sense of being seriously wronged**.
- (5) This subsection applies if D's loss of self-control was attributable to a combination of the matters mentioned in subsections (3) and (4).

# Defences

- Did B lose control because of a qualifying trigger?

# Defences

- Fear of serious violence obviously not applicable.



# Defences

- V intentionally kissed A in front of B knowing about B's feelings. She grinned at him mockingly.
- That is “something done.”

# Defences

- Extremely grave character?
- Unlikely.

# Defences

- Loss of control?
- Period between provocation and reaction must not be too long – despite the fact that the new law says that the loss of control need not be sudden.
- Deliberation usually negates loss of self-control
- No case of slow-burn anger as in battered women syndrome
- ⇔ not sufficient evidence that B lost self-control

# Defences

- Even if:
- Did B have a justifiable sense of being seriously wronged?  $\Leftrightarrow$  No.
- **Defence fails; stop examination of LoC here.**

# Defences

## 52 Diminished responsibility

(1) In section 2 of the Homicide Act 1957..., for subsection (1) substitute—

“(1) A person (“D”) who kills or is a party to the killing of another is not to be convicted of murder if D was suffering from an abnormality of mental functioning which—

(a) arose from a recognised medical condition,

(b) substantially impaired D's ability to do one or more of the things mentioned in subsection (1A), and

(c) provides an explanation for D's acts and omissions in doing or being a party to the killing.

(1A) Those things are—

(a) to understand the nature of D's conduct;

(b) to form a rational judgment;

(c) to exercise self-control.

(1B) For the purposes of subsection (1)(c), an abnormality of mental functioning provides an explanation for D's conduct if it causes, or is a significant contributory factor in causing, D to carry out that conduct.”

# Defences

- Did B suffer from an abnormality of mental functioning based on a recognised medical condition?

# Defences

- The text tells us that B, who has never had any other friends, developed serious eating and sleeping disorders and suffers from deep-seated anxiety and loneliness that increasingly affect his judgment. The reasons for this are both his hopeless love for V and the sting of the humiliation suffered at her hands earlier.
- This could in theory qualify as depression, which has been accepted as a medical condition.

# Defences

- Did the condition substantially impair his ability
  - (a) to understand the nature of his conduct;
  - (b) to form a rational judgment;
  - (c) to exercise self-control?



# Defences

- Issue for medical expertise at trial.
- Text tells us that the depression increasingly affects his judgment.
- **NB** It would therefore be acceptable to say in your answer that – subject to medical expert opinion – there is a good case that s 2 Homicide Act 1957 has been made out.

# Defences

- B may be able to successfully plead diminished responsibility, depending on the medical evidence.
- B would then not be guilty of murder, but of manslaughter.

# Sentencing frames

- **NB** Unless specifically asked, you **MUST NOT** waste time on telling us what the sentencing range of an offence is.

# A final word of warning.....

Do **NEVER...EVER** start your answer in a criminal law problem question with something like:

*“A may have a claim against B for GBH...”*

It causes the following reaction in a marker:

