

Part 1: Substantive Law

Part 1 will be worth APPROXIMATELY 75% of the overall mark.

Identify any offences with which Alison can be charged, and explain why they are appropriate in the circumstances

HOMICIDE

THE FACTS

- **Issue spotting:** death of a human being

voluntary manslaughter, intention to complete actual act in involuntary manslaughter

- **Penalties**

THE LAW

- **Charge selection:** s 12A, s 11 murder, s 13 manslaughter
- **Prosecutorial obligations:** generally proceed with most serious offence disclosed by evidence

THE CLIENT – Assessing liability

- Voluntariness
- Apply facts to elements

STRATEGY

- **Evidential issues affecting proof**
- **Alternative verdicts:** manslaughter
- Whether to plead guilty/not guilty (explain grounds), defences to raise, other action

ELEMENT ANALYSIS

- **Physical element:** causation of death of human being
- **Fault element:** no FE in s 12A, intention or recklessness for death or GBH in s 11 and

Step 1: Physical element – causation of death

Write: To satisfy a homicide offence, there must be a resulting death of a human being. Alison's action of ... was a substantive, continuing, operative cause of ...'s death as per *R v Hallett*. There is no intervening act so far outside the normal course of events that it is not causally connected to the original act, as per *Royall v The Queen*. Therefore, the physical element for the homicide offences of s 11 murder, s 12A and s 13 manslaughter, is made out.

- (a) **No issue with causation;** **Write:** As Alison caused the death of ... by ..., there is no issue with causation; there is ample evidence that the physical element is made out.
- (b) **No issue with causation;** **Write:** Based on all the evidence provided, it is clear that the act of Alison ... was a substantive and operating cause of ... death as per *Hallett*, and there was no intervening act so far outside the normal course of events that broke the chain of events as per *Royall*.
 - (i) Look at the prosecutorial evidence – autopsy report, object used, statements to police (but not to defence lawyer), witnesses
- (c) **Issue with causation;** **Write:** Given that ... there may be an issue with causation.
 - (i) **Intervening act;** Per *Royall*, the chain of causation may be broken where there was an occurrence of an intervening act so far outside the normal course of events unconnected to the original act.
 - (ii) **Substantial cause test;** Per *Hallett*, where Alison's conduct is still an operating and substantial cause of death, Alison will still be responsible unless the chain of causation was broken by an extraordinary operation of natural forces.
 - (iii) **Palpably wrong medical;** Per *Jordan*, medical treatment may break the chain of causation only if the treatment was palpably wrong and not proximate to Alison's act.

Step 2: Only if relevant – who is a human being?

- **Beginning of life:** 'legally a person is not in being until he or she is fully born in a living state': *Hutty*
- **End of life:** Under s 2 of the *Definition of Death Act*, a person has died when there has occurred
 - (a) Irreversible cessation of all function of the brain or person, or
 - (b) Irreversible cessation of circulation of blood in the body of the person

Step 3: Conduct must be voluntary (PE + FE)

- (a) **Willed, conscious decision (Ryan);** **Write:** Prima facie, Alison's conduct of ... appeared to be a willed, conscious decision and thus can be considered voluntary per *Ryan v The Queen*.
 - Not voluntary if reflex, accident or mental impairment (detailed later)

- (b) **Involuntary due to MI;** **Write:** Prosecution would argue that Alison's conduct was voluntary as However, defence may raise that Alison's conduct was involuntary as she had a **mental impairment**; thus Alison may have a defence. However, prima facie, Alison's conduct does appear to be a willed, conscious decision (*Ryan*), and thus prosecution has a good chance of proving voluntariness.

Step 4: Demonstrate knowledge of strategy by referencing charge selection and prosecutorial obligations

Write: The prosecution is obliged to charge Alison with the most serious offence appropriate on the facts and evidence. The highest charge is s 11 murder, as it attracts the greatest stigma and exposes Alison to a life imprisonment sentence, with a mandatory minimum non-parole period of 20 years.

Offence 1: Causing death by an intentional act of violence s 12A, i.e. constructive murder (no subjective fault)

1. Intentional act of violence
2. In course or furtherance of major indictable offence (arson, criminal trespass, robbery, rape – so probably won't apply)
3. Causes death
 - No intention or recklessness to cause death or GBH needed
 - *Kageregere* – arson case

Offence 2: Murder s 11 (full fault offence)

Step 1: Murder s 11

Elements of murder; **Write:** Under s 11 of the *Criminal Law Consolidation Act 1935 (CLCA)*, any person who commits murder shall be guilty of an offence and shall be imprisoned for life. Alison may face a charge of murder for the death of ...; however, her conduct will only meet the requirements of murder if she satisfies the physical element of causing the death of a human being, in conjunction with the requisite fault elements of intention or recklessness.

Step 2: If relevant – was there causation by an omission and duty to act?

- Usually only in manslaughter but may arise
- A duty may exist in statute, but no general duty exists
- **Common law duty;** **Write:** *Lawford* provides that a common law duty arises on a person where a person takes action that puts another in danger of death or injury, to take action to avert the threatened harm. For the physical element to be made out:
 - The duty must exist
 - The person who owes the duty has the capacity to act
 - The person who owes the duty fails to act
 - The failure to act causes death
 - At the time of the failure, the person who has the duty had the requisite fault element for murder (*mens rea* at the time of omission)
 - The failure can be at a single moment or over a period of time
- **Omission breaching duty;** In *Taber*, the victim dies due to the defendants' positive acts of binding and gagging, and their omission to not remove the danger to the victim (despite calling 000)

Step 3: Fault elements (fully subjective)

Need FE with PE; **Write:** For an offence of murder to be made out, Alison must have possessed the requisite fault element at the time of the conduct as per the principle of contemporaneity. Thus, she must have committed a voluntary act with either intention to cause death or grievous bodily harm, or recklessness as to causing death or GBH.

(a) Intention to kill (*Royall*)

- Prosecution would use inferences from conduct of Alison hitting temple with heavy object; neighbour witnessing her saying she was going to kill Peter
- Defence would cross examine witness as he could have misheard or mistaken, also likely he becomes defence witness as he appeared to be more worried for Alison

(b) Intention to cause GBH that results in death will amount to murder (even if there was no thought given to the possibility of killing)

- More likely to draw inferences of intent here – temple is simply where she struck him

(c) Recklessness as to causing death or GBH (fully subjective test – it is not what D *should* have known, it is what D *did* know)