



CRIMINAL LAW

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This case falls under criminal law. Harry will be charged with the offence of murder. The common law definition of murder states that “When a person of sound memory and discretion, unlawfully kills any reasonable creature in being and under the King’s peace, with malice aforethought, either express or implied” (Pachecker 2000, p. 192). The offence of murder is committed when one kills another unlawfully, either with premeditation and deliberation or by behaviour indicating an irresponsible disregard for human life (Aspen Publishers, Wolter Kluwer Law & Business 2008, p. 6).

Actus reus and mens rea are the two most important elements in proving the offence of murder. Mens rea means the intention to kill, while actus reus means the conduct of the accused that led him into committing the offence of murder (Card, Cross & Jones 2012, p. 32). The actus reus of murder, therefore, comprises of the unlawful killing of a human being in the Queen’s peace. The fact that Harry grabbed a lemon slicer and stuck it in William’s heart, which instantly killed him, is sufficient for the prosecution to prove actus reus. Consequently, his act of sticking the lemon slicer into William’s heart is what caused William to die.

The mens rea of murder is malice aforethought as was stated by *Lord Goddard CJ in R v Vickers [1957] 2 QB 664*. The element of mens rea is about the state of mind of the defendant. The offence is one of strict liability where mens rea is not required. In fact, there are three major elements of mens rea: recklessness, negligence and intention.

Intention has the biggest degree of burden in comparison with the other

levels of mens rea. An individual, who anticipates committing a crime, is more liable than one who acts recklessly. According to *Lord Bridge in R v Moloney [1985] AC 905*, intention is different from motive or desire. Thus, a person may act out of good motives by killing a loved one in order to relieve pain and suffering, but this does not stop them from having the required intention to kill. This was held in the case of *R v Inglis [2011] 1 WLR 1110*.

Recklessness may be referred to the taking of an unjustified risk. The defendant ought to have foreseen the harm may have occurred from his actions, but, nevertheless, continued with his actions regardless of the risk. This was brought out in the case of *R v Cunningham [1957] 2 QB 396*.

A person may be said to be negligent if he/she acts below the standard expected of a reasonable person in his/her circumstances. Therefore, negligence necessitates the prosecution to show that the accused owed a duty of care, breached that duty that resulted in death. The *R v Adomako case [1994] 3 WLR 288* was used as a test for establishing liability for negligence where it was stated, "negligence is whether the conduct of the defendant was so bad in all the circumstances as to amount in their judgment to a criminal act or omission."

To prove mens rea, the prosecution has several facts to present. To begin with, Harry was frustrated since he could not secure any job thus resulted into drinking heavily. The relationship they were about to register as a civil partnership was slowly deteriorating, having many arguments over petty issues. This issue depressed him and he was, therefore, put under anti-depressant medication. Harry became insecure about their relationship

with William and that is why he accessed William's Facebook account only to discover a series of intimate communications between William and Tom. Obviously, blinded by anger, he set off back home and found William and Tom in bed. He further went downstairs and began drinking. All these events, in one way or another, show reasons why Harry had the motive to kill William. The fact that he and William were constantly arguing may have been pushing him to the edge. His insecurity towards their relationship may also show his having pre-determined mind to getting back on William for cheating on him. Having seen those intimate communications between William and Tom, he ought to have stayed a little longer on vacation to calm down, but instead he set off for home immediately with the intention of confronting William. Also, on finding them in bed, he did not confront them, but instead went downstairs to drink. Therefore, Harry being in an intoxicated state could not reason normally when dealing with William once he came downstairs.

The general rule is that one is innocent until proved guilty. The burden of proof lies with the prosecution. Since the prosecution has charged Harry with the offence of murder, it has the legal obligation of proving that indeed all elements necessary for the commission of this offence are present. The standard burden of proof still lies with the prosecution. The standard is beyond reasonable doubt that Harry has committed the actus reus and the mens rea of murder. Harry's guilt has to be proved beyond reasonable doubt by the prosecution. This basic principle was set out by the House of Lords in *Woolmington v DPP (1935) AC 462, HL*. The defendant, Harry, has the burden of adducing sufficient evidence to raise a defence aimed at casting doubts at the prosecution's case. In addition,

the prosecution in turn has to disprove the alleged defence beyond reasonable doubt (Card, Cross & Jones 2012, p. 111)

One of the defences available for Harry is intoxication. Intoxication is said to a state in which the capacity of a normal person to reason or act is inhibited by drugs or alcohol. An intoxicated person cannot act like an ordinary, reasonable person would, under the same situation. After finding William and Tom in bed, he chose not to confront them directly, but to calm himself down by having a drink. Moreover, being intoxicated, he was not in his proper state of mind and could not have possibly had the intention of killing William. His intoxication diminishes his responsibility to know what is wrong or right and he might not have killed William if he had not been intoxicated. This was held in the case of *Dietschmann (2003) UKHL 10* (Strain, Langrod & Ruiz 2007, p. 498).

The defence of insanity is also available for Harry. The M’N aghten rule defines insanity as not being able to tell the difference between what is right or wrong. The defence has to prove that the defendant had a disease of mind at the time of committing the offence that made him not know the quality and nature of his actions. After his unsuccessful search for a job, Harry became depressed and a doctor prescribed him anti-depressant pills. He did not to take his medication as prescribed as he forgot to carry his pills during his short vacation. He was, therefore, unable to understand the nature of his act and could not make any rational decisions (Greene & Heilbrun 2010, p. 225).

Provocation is another defence available for Harry. The case of *R v Duffy*

(1949) 1 All ER 932n provides the common law definition of provocation:

Provocation is some act, or series of acts, done by the dead man to the accused which would cause in any reasonable person, and actually causes in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not master of his mind...

Harry's decision to go on a short vacation in order to move away from the arguments, drinking and frustrating job search shows that he had good intentions. He took a short break to sort himself out and come back when he was relaxed and try work things out with William. William, on the other hand, had different intentions. He was already cheating on Harry, the fact that he proudly admitted to Harry with no remorse. This became too much for Harry to take in and, therefore, killed William in anger. As if finding William and Tom in bed was not enough torture for Harry, they went ahead to taunt him. They bragged about how they had found fulfilment together and told Harry that he was just history. Being intoxicated, angry and frustrated that nothing was working out, especially his relationship, he found himself sticking the lemon slicer into William's heart killing him instantly.

Despite the defences presented above by Harry, he will be found guilty of murder. To begin with, it was through his own oversight that he forgot to carry his anti-depressant tablets. Secondly, his intoxication was voluntary. He chose to have a drink in the same house that he found William in bed with Tom. His drinking may have been aimed to get him the courage to kill

William since he was cheating on him. In the case of *Attorney General (Northern Ireland) v Gallagher (1963) AC 349*, the House of Lords held that the defendant could be convicted of murder on the basis of his earlier intention despite his state of mind at the time of committing the offence. The defendant had decided to kill his wife and consumed half a bottle of whiskey (Lanham, Bartal, Evans & Wood 2006, p. 63)