

**CRIMINAL LAW**  
**MODEL EXAM**



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## IRAC method of completing exams

- Issues** - Outline the issues that you are going to discuss.
- Rules** - Define the legal rules that are relevant to the question.
- Application** - Apply the legal rules to the facts of the question (this is the hard part!).
- Conclusion** - Tie things up, usually in the form of an advice to your hypothetical client.

Always use your reading time wisely to **PLAN YOUR ANSWER** before writing. This is of utmost importance as it will help you clarify your thoughts and ensure that you avoid following desperate exam strategies that unprepared students commonly resort to, such as:

- i) 'the kitchen sink' i.e. spilling all of your knowledge that is vaguely related to the topic onto the exam paper and hoping for the best.
- ii) 'the garden path' i.e. going off on an irrelevant tangent

Remember that the **APPLICATION IS THE MOST IMPORTANT SECTION** of your answer and should take up the bulk of your time. The actual conclusions you reach are often superfluous. Rather, your marker will be most interested in *how you arrived* at your conclusion.

### Question One

Discuss and assess whether the current state of the law concerning the **offence** of murder can be improved.

### Answer

The law of murder is vague and there is widespread agreement that it needs to be modified and brought into line with other offences, most of which have statutory definitions. The *mens rea* of murder has only been changed by the courts (such as in *R v. Vickers* (1957)) and Parliament has shown reluctance to act. The current law, some would say, is slow and unworkable as a result. Such important changes can only be

made when cases are brought to the courts, and considering the seriousness of the offence many commentators and the Law Commission believe that the problems with the law should be rectified by Parliament. The reform of the law of murder would be a significant step in the progress of English law. Before discussing whether any proposals would improve the existing law of murder, it would be worthwhile to consider the law as it stands and what the alternatives are.

In the 18<sup>th</sup> Century, Lord Coke held that in order to successfully convict a person of murder, it must be proved that they unlawfully killed a reasonable creature in being and under the Queen's peace (*actus reus*), with malice aforethought, express or implied (*mens rea*). This definition is still relied on today by the prosecution. It was decided in *R v. Moloney* (1985) that the person need only intend to cause really serious injury in order to satisfy the *mens rea* requirement. Existence begins from birth and it was held in *Attorney-General's Reference (No. 3 of 1994)* that where injuries are inflicted upon a child in the womb, resulting in injuries after birth, there is no murder. The killer can, however, be guilty of an offence against the mother. In *R v. Brain* (1834) there was evidence that although the child had been born by the time it was killed, there was no murder since it had not yet breathed. Lawful killings, such as the killing of an enemy in wartime or the instance of a doctor turning off a life-support machine in some circumstances, are justified and are therefore not murders. Under section 1(1) of the Murder (Abolition of the Death Penalty) Act (1965) a murder conviction results in a mandatory life sentence of imprisonment, though the Criminal Justice Act (2003) created different categories of actual sentences depending on the severity of the offence.

In 2005 the Law Commission proposed a Homicide Act for England and Wales which it wants to replace the Homicide Act (1957). The Commission argued for a statutory classification of two separate offences of murder (first degree and second degree). First degree murder would cover killings where the defendant intends to kill. Anyone convicted of this offence will face a mandatory life sentence. They proposed that second degree murder would be the appropriate charge for defendants who kill: with the intent to do serious harm to the victim, through reckless indifference to causing death, or intentionally but where they have a partial defence to first degree murder. Sentencing will be at the discretion of the judge passing sentence. The partial defences of

provocation and diminished responsibility, and the defence of duress will remain, but will reduce a charge of first degree murder to one of second degree murder, giving the judge a sentencing discretion.

### **Question Two**

Janet, a professional boxer, became very depressed and started drinking heavily. One day, after drinking for seven hours in a local tavern and taking several prescribed anti-depressants, she saw Julie, another professional boxer, who had lost a match to Janet a few weeks earlier. Janet approached her from behind and smashed a bottle over her head.

Subsequently, Julie was taken to hospital where she suffered a blood clot and died. Had the blood clot not occurred, she would have lived. Hayley, Julie's sister, heard the news of Julie's death and immediately drove to Janet's house. She saw Janet and she threw stones at her from her car, and missed. She then shouted "I'll kill you". Over three months she wrote revenge messages to Janet and made a number of threatening phone calls. Janet became even more depressed and suffered stress, so that she took leave from work.

After three months, Hayley bumped into Daniel, her boyfriend, and his brother, Adam, at the local supermarket. Daniel and Adam sympathised with Hayley and said that Janet should not be allowed to live. Hayley suggested that Daniel should follow Janet into a dark alley one night and strangle her to death. Adam was unsure about it, but eventually agreed to Hayley and Daniel's persuasion. Daniel followed Janet two nights later and dragged her to an alley near her house. He covered her mouth and proceeded to strangle her. However, he became scared and ran away. Janet managed to recover her breath and screamed.....

### **Question Three**

Alex recently became friends with Sarah, a neighbour. One day, Sarah invited him over to decorate her living room. He agreed and she left him alone in the house to do it. After she left, Alex rummaged through the house to look for her credit card and PIN number. The card was in her purse, and the PIN number was behind her wardrobe. He left the house in a mess and damaged her wardrobe when moving it. He attempted to withdraw money from Sarah's account at a cashpoint, but the PIN he had found was incorrect. Annoyed with this, he threw the card in a bin.

Alex wanted to buy a phone because his previous phone had been stolen a month earlier. Around an hour after leaving the cashpoint, he saw two schoolboys, Andy and Max, walking along a road and he decided to follow them. He approached them with a knife and said "if you don't give me all of your money I'll gut you both". He then dropped the knife by accident and Max took the opportunity to kick him in the face as he bent over to pick it up. Max and Andy then ran home in fear.

Later that night, Andy and Max went back to the place where they had been approached by Alex. They noticed a wallet and the knife on the pavement. Max picked the wallet up and saw some money in it. There was also a picture of Alex inside it. Max took the knife and money, but left the wallet. He suggested splitting the money between himself and Andy, but Andy wanted to hand it in at the police station which was two minutes away. Max did not like the idea, and he told Andy to take the money or he would cut him up like Alex wanted to. Alex, in fear, chose to take half of the money.....



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