

For examiner's use	
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Examiner's use	
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Question	

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- Write here how many additional sheets you have used (if any).

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AB16

14.

D and G have committed various offences which shall be discussed below.

Firstly, D pushed F roughly out of the way and caused F to fall and hit his head on the pavement outside. The severity of the fall caused F to bleed heavily and ^{his ~~the~~ blood to} pool beside his head. D may be charged ~~under S47 of~~ for battery under S20 of the Offence Against Persons Act (hereinafter known as OAPA). The actus reus being the unlawful force inflicted that caused grievous ~~to~~ bodily harm. ~~Grievous to~~ The meaning of grievous bodily harm as upheld in DPP v Smith. The mens rea being intention ~~to inflict grievous bodily~~ or recklessness to cause grievous bodily harm. Here, D pushed F roughly and upon seeing F ~~hit~~ bleeding profusely, ~~meant~~ felt that he 'deserved' it meant D had the intention ~~to~~ to inflict harm onto F and did so by pushing him roughly. Therefore, D may be liable for battery under S47 of the OAPA.

However, D might raise the defence that he was acting in self defence as F had stretched out an arm. Nevertheless, this defence ~~cannot~~ can be quashed when applied the thin skull rule upheld in R v Blaue where one must take a person as they are without taking into consideration the frailty of their condition. Therefore, D's charge under S47 of the OAPA still stands.

Moving on, when G saw F lying on the ground ~~unconscious~~ unconscious, she took advantage of the opportunity and searched F's pockets finding £300 in his wallet, ~~and taking~~ ^{took} it and ~~putting~~ it into her handbag. G may be charged under S1 of the Theft Act. The Actus reus being appropriating another's property whereas the

mens rea being to permanently deprive ~~one of~~ another of their property. Mere borrowing will not be sufficient. Here, G had seen the whole commotion that went down between D and F but instead of helping in any way, G searched F's pockets and pocketed his £300 thus satisfying ~~the~~ both the mens rea and actus reus as after that G just left. Thus, G may be charged under s1 of the Theft Act.

Then, the question is whether or not D is responsible ~~for~~ to call for an ambulance to ^{come} treat F. D is under a duty to act as he created the dangerous situation that F was in. The actus reus being the omission and the mens rea being the intention or recklessness to omit the action. In this case, D had put F in a dangerous situation as he is the one who pushed F roughly and in spite of seeing

Then, the question is whether or not D is liable for the manslaughter of F?

First To determine this, legal and factual causation must be raised. Under factual causation, the 'but for' test must be satisfied. In this case, if D had not pushed F, F would not have ~~not~~ been unconscious which led him to die. Therefore, the 'but for' test is satisfied. Then under legal causation, the defendant must have foreseen his act could have resulted in the death. Here, D saw a pool of blood lying besides F's head, D ~~still~~ ~~though~~ could see the severity of the injury he inflicted and thus could have foreseen that F could possibly bleed to death (R v Corbett). ^(White)

In addition, it must be determined whether or not D has the responsibility to call an ambulance for F. In this case, D is under a duty to act as he created the dangerous situation that F was in. The actus reus being the omission of the duty and the mens rea being the intention or recklessness that resulted in the omission of duty. Here, D was under

duty to act to call an ambulance for F. The opposite could be said for G as she ~~was not~~ ~~at~~ did not have any assumed responsibility, duty to care under statute, special relationship nor did she create the dangerous situation for F.

~~D~~ D may be charged with murder and is unlikely to have a defence to bring the charge down to manslaughter as there is no ~~qualifying trigger~~ loss of self control and the defence of self defence ~~being~~ ^{was} quashed earlier.

Then E Plc ~~can~~ most probably can not be charged with any offences as the incident occurred outside the ~~vicinity~~ ^{premises} of the bar.

To conclude, D may be found guilty of murder and G guilty of theft.

Spots, issues / lacks detailed

Analysis

Some relevant issues raised.

Lacks proper explanation + detail.

Some simplistic concepts described.

Some application - inconsistent

1 To determine whether A would be obliged by law to buy B's car, one would need to go through the laws that govern this matter.

Firstly it is to be determined whether the letter sent to A from B amounts to an offer or merely an invitation to treat. In this case, since it is a direct letter from B to A and not a newspaper advertisement (Patridge v Crittenden) the letter sent from B to A is an offer to enter into a bilateral contract. A bilateral contract being both parties come up with the terms of the contract. will negotiate and

Moving on, on the same day itself A sent a fax message to B. However, the message contained in the message did not amount to an offer acceptance to B's offer but a counter offer as to offer to pay for the car by instalments. Since fax messages are instantaneous, acceptance must be communicated. B however did not reply A's counter offer and in this case, silence cannot amount to acceptance unless expressly stated so by the offeror. Therefore, there was no acceptance to A's counter offer on B's part yet.

As A had not heard from B for more than a week, this lead A to accept the initial offer and to agree to pay the price of the car of £60,000 in one single payment. Since A posted his acceptance, the postal rule as upheld in Addams v Linsdell applies where as soon as the post is sent, acceptance is communicated. Therefore, with the sending of the post by A, he and B were in a legally binding contract.

However, on the same day A had seen another advertisement placed by C offering which was a better deal compared to B. A then immediately called B up to withdraw from his offer which he sent acceptance by post but and left a voicemail stating to ignore his letter

meaning to withdraw his acceptance. Again, since these are means of instantaneous communication, acceptance must be communicated.

The acceptance

Again, the acceptance by B was not communicated as B only arrived home the next day and then only was able to listen to his voice mail messages and open his posts. Even though, B had ~~heard~~ listened to A's voicemail message before opening the letter to accept his offer, the postal rule still stands and the acceptance of the offer was communicated when A posted the letter. Therefore, A could not withdraw his acceptance as ~~it had already~~ acceptance was communicated when he posted the letter ~~to~~ therefore making the contract binding.

To conclude, since acceptance was communicated when A posted the letter according to the postal rule, there exists a legally binding contract between A and B. ~~Thus~~ Therefore, A would be ~~legally~~ obliged by law to ~~buy~~ buy B's car. If not, he would be in breach of the contract.

15.

To determine H's criminal liability, if any, for J's death. To determine if H is liable for J's death and if K might be guilty of any offences, the various offences will be discussed below.

Firstly, in a fit of rage, J repeatedly stabbed J with a pair of scissors. J may be liable for battery under ~~s41~~ s20 of the ~~Offences~~ Offences Against Persons Act (hereinafter known as OAPA). The actus reus being the unlawful force inflicted to cause grievous bodily harm. Grievous Bodily harm meaning as upheld in DPP v Smith. The mens rea being intention or recklessness to cause grievous bodily harm. In this scenario, H fell into a fit of rage after misinterpreting J's letter which led him to stab her ~~with a~~ repeatedly with a pair of scissors. H ~~obvious~~ obviously had the intention to inflict harm on to J as to ~~even~~ seek revenge on her and the harm done was serious as H ~~had to carry~~ J was incapable of walking on her own which led to H carrying her down the stairs. Therefore, H may be liable under battery under s20 of the OAPA against J.

Moving on, it needs to be determined if H may be liable for J's death in the end. Firstly, the factual and legal causation will have to be raised. Under factual causation, if H had not stabbed J, J would not have ~~been~~ mauled by the dog ~~in owned~~ by to death by the dog owned by K. Therefore, the 'but for' test as upheld in White's case is satisfied. Then, under legal causation, H must have been able to have foreseen the ~~danger he was putting~~ dangerous situation he was putting J into. The dangerous situation being to put J at risk of being mauled by the fierce dog. The fierce dog was already notorious amongst the neighbours for its violent characteristics. Therefore, H could have foreseen the danger as upheld in R v Pagett.

Thus, H may be linked to the death of J therefore making him

liable for ~~J's death~~ the murder of J. The actus reus for murder being the unlawful killing of another human being and the mens rea being the intention or recklessness to cause unlawful killing of another human being.

However, H may ~~be~~ bring up defence of ^{loss of} self control under 844-845 of the Coroners Justice Act to lower his charge from murder to voluntary manslaughter. To prove ~~se~~ loss of self control, he must be able to prove the 'qualifying trigger'. ~~Being~~ Qualifying trigger cannot be used if:

- i. the defendant ~~incited the~~ is the one who incited the provocation.
- ii. there are elements of ~~sexual~~ infidelity.

In this case, there are elements of infidelity as H got into a fit after thinking J was going to leave him. Therefore, the defence for loss of self control would be unavailable in H's case. H's charge for murder still stands.

Then, K might be guilty of negligence (~~R v Adomako~~) as even though following complaints from his neighbours and a warning from the police, K failed to take necessary ~~precautions~~ to prevent his fierce dog from acting out.

To conclude, H may be charged for battery under 820 of the OAPA and the murder of J. Whereas, K may be charged for negligence.

2.

To determine whether D and E will be able to claim compensation for the concerts they missed, ~~and~~ one must go through the laws that govern this matter.

Firstly, there has been a misrepresentation as to the holiday package D and E ^{had booked}. A misrepresentation is ~~an~~

- i. an untrue statement ~~that~~ by one of the contracting parties.
 - ii. a statement of fact or law.
 - iii. the untrue statement must have induced the other party to enter into the contract.
- In this case, the holiday package included a 5 star hotel with a gymnasium. This statement is untrue as ~~in fact~~ in fact the gymnasium was closed for renovation and F Travel failed to inform D and E about it. This very statement had induced D and E into entering the contract as E needed to exercise daily.

In order to claim ~~claim~~ any remedies, the type of misrepresentation will then need to be identified. In this case, it is a fraudulent misrepresentation where the claimant has to prove the defendants made the statement

- i. ~~the~~ knowing it to be false,
- ii. without belief in its truth.

Therefore, the travel agency, F should have known the gym was closed ~~in~~ for renovation but still did not mention it to D and E. Thus, ~~the contract can be rescinded~~ D and E can rescind the contract ~~and~~ claim damages.

Moving on, as G had to cancel the concert due to food poisoning, the contract had been frustrated. If a contract has been frustrated, it is due to unforeseen circumstances. In this case, G suffered from food poisoning which made it impossible for G to perform. Usually when a contract is frustrated, one cannot claim for damages.

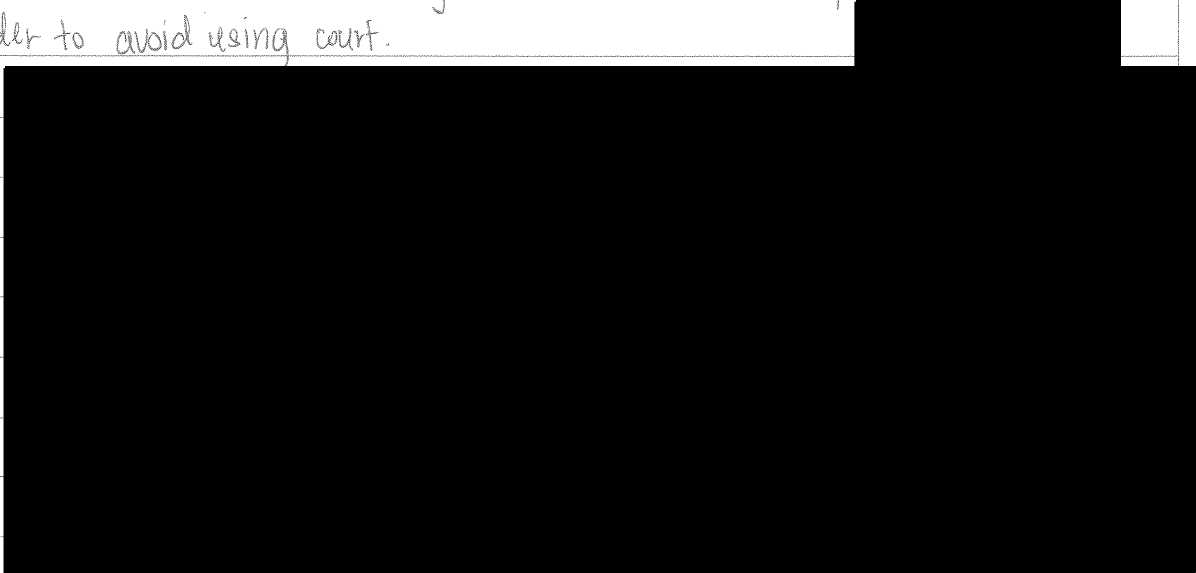
However, F Travel had an exclusion clause that encompasses almost every single detail of liability they want to exclude. D and E will not be able to claim compensation for the first two concerts due to their late arrival as it is expressly mentioned that "F Travel ^{will} not be liable for acts or omission of any independent contractor providing any part of the holiday package". nor ~~can~~ D and E claim for the rest of the ~~the~~ ~~4~~ concerts D could not attend due to

However, D and E can claim for compensation for the 3 concerts he missed due to food poisoning as the exclusion clause mentions nothing about illness but D and E cannot claim for G's farewell concert as it was cancelled and F Travel will not be responsible for any cancellations of programmes.

D may might be able to claim compensation for the food poisoning he suffered as well as F Travel does not exclude liability for illnesses caused by the food served. Furthermore, it was not D who suffered the food poisoning as G did too which led to a cancellation of G's farewell conclusion.

settle out of court by

To conclude, F Travel might ~~pay~~ ~~paying~~ minimum compensation to D and E for the 3 concerts they missed and the food poisoning in order to avoid using court.



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