

## Preparation for Timed Essay on Murder

Critically evaluate the offence of murder (25)

‘The offence of murder is too complicated both in theory and practice. It needs to be simplified by Parliament’. Discuss the extent to which this statement is accurate. (25)

The following questions will form the basis of an answer to the essay questions. Once you have answered all questions you will need to edit your answer so you can form an essay with a clear introduction referring to the essay question (the purpose of your essay), main body of principles and analysis, referring again to the essay question at regular intervals. You need to have a good conclusion and answering the essay question.

1. Set out the definition of the offence of murder. Who created this definition and is it a statutory or common law offence?

Murder is a common law crime that is not defined in any statute. The current sentence is a mandatory life imprisonment with a minimum sentence of 15 years. Lord Chief Justice Coke in the 17<sup>th</sup> century gave the original definition of murder ‘the unlawful killing of a human being under the Queen’s peace with malice aforethought and if death occurs after three years the approval of the Attorney General is required.

2. Set out the actus reus of murder and briefly explain each part as developed by judges as a result of murder cases. Does the AR need to be reformed?

The actus reus of murder is

1. The defendant did the act of killing – including omission e.g. R v Gibbins and Proctor – father + mistress starved their 7-year-old to death. Failed to feed her.
2. The act was unlawful – no valid defence
3. The death was of a person ‘in being’ e.g. doesn't include foetus – AG Ref 1997, boyfriend stabbed her in stomach, foetus died. Couldn't be convicted of murder of manslaughter as the foetus in law isn't classed as a human
4. The act was a significant cause of the death e.g. causation – factual but for R v Hughes appellant who had no license was driving, there was an accident and victim died. If appellant wasn't driving the car as he shouldn't - have no license, there accident wouldn't have occurred, legal de minimus R v Cato D and friend were preparing heroin. Friend prepared his own injection and asked D to inject in him. Next day his friend was dead.

3. Set out the mens rea of murder. Explain the difference between direct and oblique intent. Do both require guidelines?

Mens rea of murder is defined as malice aforethought which means either an intention to kill or intention to cause grievous bodily harm – serious harm e.g. R v Vickers. Hit an old woman in the

head, she died, said he didn't intend to kill her but cause serious harm. He was convicted. Direct intent – D main aim or purpose R v Mohan (speeding towards police). Indirect intent – unintended but foreseeable consequences R v Moloney – both drunk, stepfather said 'bet you don't have the guts to pull the trigger' in his drunken state, he didn't believe gun was pointed at father and he pulled, killing him.

Both don't require guidelines and direct intent is obvious. It is the main aim or purpose.

4. Explain what is meant by the degree of foresight and explain the significance of section 8 of the Criminal Justice Act 1967.

the degree of foresight is how likely it is to see the consequences before you carry out your actions. Under s8 of the CJA 1967 the jury must do the subjective test, understand and see things from the from the D POV and the jury must consider all the evidence provided

5. In Moloney what is the golden rule? What was the guideline on intention in this case?

in Moloney the principle shows that judges should avoid any elaboration or paraphrase of what is meant by intent and leave it to the juries as to decide whether the D acted with necessary intent. guidelines - was death or really serious injury a natural consequence of the defendant's voluntary act? Secondly, did the defendant foresee that consequence as being a natural consequence of his act?

7. In Hancock and Shankland why did Lord Scarman criticise the guidelines in Moloney and what did Lord Scarman suggest? In Hancock and Shankland Lord Scarman criticized the guidelines in Moloney as the use of the phrase 'natural consequence' was unsafe and misleading as it didn't refer to the probability and he suggested that the jury needed to be directed on the relevance of what the defendant foresaw

8. What was the model direction created by Lord Lane in Nedrick? Was this an improvement compared to previous directions? The jury are entitled to infer intention where D realized that death or serious injury was a virtual certainty

10. How was the Nedrick direction modified in Woollin? The jury entitled to find intention where D realized that death or serious injury was a virtual certainty

10. Briefly evaluate the strengths and weaknesses of the Woollin direction? A weakness of the Woollin direction is that it doesn't provide a definition of intention and the law remains slightly unclear. a strength however is that the word 'infer' has been changed to 'find' which is more solid, certain and definite compared 'infer'

11. Explain Matthews and Alleyne and the difference between a legal and evidential test. In *Matthews and Alleyne*, the V was thrown into the middle of a wide river and drowned. D's knew the V couldn't swim. The judgement in *Woollin* meant that foresight of consequences is a rule of evidence but here the Court also said that there was little difference between a rule of evidence and a rule of law.

14. Explain and evaluate the Law Commission's current proposals for law reform on intention? The law commission proposed that murder should be reformed by dividing it into two separate offences 1. first degree murder and 2. second degree murder. First degree murder would cover situations where the D intended to cause serious harm and was aware that his conduct posed a serious risk of death. Cases where the D intended to do serious injury but not aware of the serious risk of death would be a second-degree murder. By dividing murder into separate categories, the mandatory life sentence would only apply to the first-degree murder. Second degree would carry a max life sentence but would allow the judge discretion in sentencing

The LC proposal was rejected the complete reforming of murder by making it a two-tier offence. The only area where the government accepted that reform was needed was the lack of a defence for those who use excessive force in self defence.

They also recommended that the *Woollin* guidelines on oblique intent should be codified. This would mean that foresight of a virtually certain consequence would remain as evidence of intention allowing juries to find it and thereby rejecting the legal test. However, the government failed to enact this proposal

15. In conclusion consider whether it is necessary for Parliament to intervene or is the current law on murder satisfactory? In conclusion the current law is alright. There isn't much gap in the law. It fully covers most things e.g. foetuses and there are many factors to be satisfied for the actus reus. However, Parliament needs to intervene as there are issues with the law. It needs to be simplified. The law on murder has developed bit-by-bit in individual cases and is not coherent. In addition to this a D can be convicted of murder even if the D only intended to cause serious harm not death. There is also no defence available if excessive force is used in self-defense. Furthermore, the defence of duress is not available as a defence to murder therefore the Parliament needs to intervene.