

## Answers to self-test questions

### Chapter 5

#### 1. Define murder.

Murder is defined by Coke as “when a man of sound memory, and of the age of discretion, unlawfully killeth within any county of the realm any reasonable creature *in rerum natura* under the king's peace, with malice aforethought, either expressed by the party or implied by law, [so as the party wounded, or hurt, *etc.* die of the wound or hurt, *etc.* within a year and a day after the same].”

This means that murder is where a defendant unlawfully causes the death of a person with an intention to kill or cause GBH.

#### 2. What is the *mens rea* for murder? Cite an authority for this.

Traditionally defined as “malice aforethought”, the *mens rea* is today defined as an intention to kill or cause GBH: *Vickers* (1957).

#### 3. Explain the difference between voluntary manslaughter and involuntary manslaughter.

Voluntary manslaughter is where the defendant has committed the *actus reus* of murder with the *mens rea* of murder, but liability is reduced due to a special defence (either loss of control, diminished responsibility or suicide pact).

Involuntary manslaughter arises where the defendant commits the *actus reus* of murder but does not have the *mens rea* for murder.

#### 4. What is the subjective element of the defence of loss of control?

The defendant must be proved to have lost self-control under s.54(1)(a), Coroners and Justice Act 2009, although the loss of control need not be sudden (s.54(2)). There must also be a qualifying trigger under s.54(1)(b) which causes the loss of control.

**5. Explain what a qualifying trigger is.**

A qualifying trigger must cause the loss of control in accordance with s.54(1)(b), Coroners and Justice Act 2009. There are two possible qualifying triggers under s.55 of the Act: the fear trigger (s.55(3)) and the anger trigger (s.55(4)), or the qualifying trigger might be a combination of both of these (s.55(5)).

The fear trigger under s.55(3) requires that the defendant's loss of control is attributable to his fear of serious violence.

The anger trigger under s.55(4) requires that the defendant's loss of control is attributable to things said and/or done which amounted to circumstances of an extremely grave character and caused the defendant to have a justifiable sense of having been seriously wronged.

**6. Explain the difference between “gravity characteristics” and “control characteristics”.**

Gravity characteristics are characteristics which affect the gravity of the provocation to the defendant characteristics. Control characteristics are characteristics which affect the level of self-control to be expected of the defendant.

**7. Can any of the defendant's characteristics be taken into account in relation to the last element of loss of control?**

Any of the defendant's characteristics which affect the gravity of the provocation can be taken into account.

However, in relation to control characteristics, only the defendant's age and sex can be taken into account: see s.54(1)(c), Coroners and Justice Act 2009 which adopted the position taken in the cases of *Camplin* (1978) and *Attorney General for Jersey v Holley* (2005).

**8. What are the elements of diminished responsibility?**

- i. An abnormality of mental functioning
- ii. Arising from a recognised medical condition
- iii. Which substantially impaired the defendant's ability to understand the nature of his conduct, form a rational judgment or exercise self-control, and
- iv. Which provides an explanation for the defendant's acts and omissions in doing or being party to the killing.

**9. Who bears the legal burden for: (a) loss of control? (b) diminished responsibility? (c) suicide pact?**

- (a) The prosecution
- (b) The defence
- (c) The defence

**10. What are the requirements of the defence of suicide pact?**

Suicide pact requires all persons who are party to the pact to have a “common agreement” which has as its object the death of all parties to the pact. Only acts committed while the defendant has a “settled intention of dying” may be treated as acts done in pursuance of the suicide pact: s.4(3), Homicide Act 1957.