

Dan who has a grudge against his neighbours, Paul and his wife, Penny, surreptitiously interferes with the braking system of Paul's car one night. The following morning, as usual, Paul and Penny set off to work in the car together with their daughter, Priscilla, whom they intend to drop off at a nursery. The brakes of the car fail and Paul, who has just begun learning to drive, is unable to control the car and prevent a collision with another car. The impact of the collision throws Paul out of his car onto the road. An oncoming lorry driven by Eric runs over Paul, who dies in the ambulance which is taking him to the hospital.

Penny and Priscilla are injured in the accident and are taken to hospital, where it is found that Priscilla is in need of a blood transfusion and medical treatment. Penny refuses to consent to this medical intervention, as it is contrary to her and Paul's religious beliefs. Weakened by loss of blood, Priscilla catches pneumonia and dies.

Penny's condition deteriorates and she is connected to a life support machine. She is seen by Dan's wife, Delia, a nurse at the hospital, who also hates Paul and Penny. Delia switches off Penny's life support machine with the result that Penny's bodily functions cease a few minutes later.

**Discuss the possible criminal liability arising in the above situation.**

Dan may be liable for: murder, manslaughter; attempted murder; criminal damage. Delia may be liable for murder or attempted murder.

### Dan

Murder is the unlawful killing of human being during the Queen's Peace with malice aforethought.

The actus reus of murder will be satisfied if Dan has caused the deaths. Has Dan caused Paul's death? Causation in fact: **but for test**: Paul would not have died but for Dan's surreptitious interference with the brakes. Causation in law: does Eric's lorry running over Paul constitute a **novus actus**? Probably not as it must be a reasonably foreseeable consequence of Dan's acts (**Page (1983)**).

Has Dan caused Priscilla's death? Causation in fact: **as above**. Causation in law: Dan must take his victim as he finds her. No defence that victim herself refuses to accept treatment (**Holland (1841)**), even if treatment would save her life (**Blaug (1975)**). No cases on this exact point, but by extension of **Blaug (1975)**, Dan remains liable.

Has Dan caused Penny's death? Causation in fact: **as above**. Causation in law: Dan remains liable if the original wound was still an **operating and substantial** (i.e. more trivial) cause at the time of death (**Smith (1959)**). If not operating (i.e. wounds have healed) refer to **Cheshire (1991)**: did Dan make a **significant contribution** to her death? Put another way, was the medical treatment **independent** of the original injuries and **potent** enough to cause death? Difficult to say without more details. In any event of a jury question, Dan could argue medical treatment was **palpably wrong**: this will break chain (**Jordan (1956)**). If chain is broken, Dan's liability is at most for original injuries and/or attempted murder (subject to proof of intention to kill).

Did Dan have the mens rea for murder i.e. malice aforethought? Malice aforethought is satisfied by an intention to kill or do grievous bodily harm (GBH) (**Moloney (1985)**).

Did Dan intend to kill or cause grievous bodily harm? **Direct Intent**: Did he want/desire Paul to die/suffer serious injury? If yes, Dan has mens rea of murder. The fact of Dan's holding a grudge and his "surreptitious" interference with the brakes is evidence that he had direct intent. But if no, **Oblique Intent**: jury may find that he intended death/grievous bodily harm if he foresaw death/serious injury as a virtually consequence of interfering with the brakes (**Woollin (1997)**). Depends on how likely/probable Dan thought that consequence was. Fact that Paul is a learner driver would make it harder for Dan to deny that he did not realise a crash and hence death/serious injury was at least a possibility. That might not be enough for murder which would require that Dan foresaw death/injury as "virtually certain" before a jury could find that he intended it to happen. If Dan has mens rea vis-à-vis Paul then **transferred malice** will apply to Penny and Priscilla. (**NB this is the case even if Paul had survived**).

If there is no mens rea, potential liability for **involuntary manslaughter** on basis that his interference was an unlawful and dangerous act (i.e. criminal damage).

### **Simple Criminal Damage: s.1 (1) Criminal Damage Act 1971**

Criminal damage is committed where a person, without lawful excuse, intentionally or recklessly destroys or damages property belonging to another.

The actus reus of criminal damage is destroying or damaging property belonging to another. Damage need not be permanent; it is a question of fact and degree (**Roe v Kingerlee [1986]**). One test would seem to be whether Paul is put to expense in cleaning or repairing the property (**Hardman v Chief Constable of Avon & Somerset [1986]**). Interference with brakes probably qualifies as “damage”.

The mens rea of criminal damage is intention or recklessness as to causing damage. This is a clear case of intentional damage.

### **Aggravated Criminal Damage: s.1 (2) Criminal Damage Act 1971**

Aggravated criminal damage is the destroying or damaging of property belonging to another, intending or being reckless whether life would be thereby endangered.

The actus reus is the same as above.

The mens rea required in addition to that for the simple offence is that Dan intended/was reckless as to whether someone’s life would be endangered **by the damage**. The crime is only made out if he intended that, or was reckless whether the damage to the car endangered someone’s life (**Steer [1987]**, **Warwick [1995]**, **Webster [1995]**). The form of recklessness required in criminal damage is **Caldwell [1982]** i.e. Dan is reckless if he does an act which in fact creates an **obvious and serious risk** (obvious according to the ordinary prudent individual: **Elliott v C [1983]**) that someone’s life will be endangered; and he either has not given any thought to the possibility of there being any such risk or has recognised that there was some risk involved but has nonetheless gone on to do it.

## **Delia**

### **Murder**

The actus reus will be satisfied if Delia has caused Penny to die. Causation in fact: **but for** test: Penny would not have died in the same circumstances, at the same time, but for Penny’s actions; therefore, she has caused death in fact. Causation in law: Penny was on life-support machine but Delia will have caused death (as well as Paul – Delia’s actions will **not** break the chain of causation (**Malcherek [1981]**) if she has **accelerated** Penny’s demise. Irrelevant that Penny’s life was already endangered. One slight ambiguity: Penny’s “bodily functions” cease. Was she already brain dead? If so, Delia has not committed homicide, as cannot kill a corpse, i.e. a person who is brain dead, even if other functions survive, e.g. heartbeat (**Malcherek [1981]**). Will still remain liable for attempted murder. The mens rea of murder is satisfied as it seems Delia intended to kill.