

Archie is employed to protect the pheasants on Lord Melchett's estate from poachers. One day, from a distance he sees Liam and Craig on the estate and, knowing them to be poachers, he decides to 'rid himself of the problem for all time' and fires his shotgun at them. Both Liam and Craig are only wounded, however, but do need to be taken to hospital for treatment. On the way to the hospital, the brakes on the ambulance fail, it leaves the road and overturns on a bend and Liam dies in the accident.

With reference to the case situation above, discuss, using decided cases to support your arguments:

- a) **The offences, if any, with which Archie could be charged and what the prosecution would need to prove to establish liability for each offence; (20)**
- b) **And whether you think Archie would be convicted of any offence. (5)**

a. In relation to the death of Liam, there is the possibility that Archie would be charged under homicide. Archie carried out the *actus reus* of homicide, whereby he has committed an unlawful killing in the Queen's peace in the county of the realm and death occurs within 1 year and 1 day. Although Liam died only in the accident, the main cause for his death was Archie shooting at him. As such, Archie has provided for the cause in fact, according to the 'but-for' test, where if but-for Archie, Liam would not have died. Contrary to R v. White, where the defendant's mother died not from his poisoned drink but from a heart attack, Archie caused Liam's death. Furthermore, Archie also undertakes the cause in law, as Liam's wound is both substantive and operative. This is because it was Archie's action that caused the injury (substantive) and this injury was still present at the time of Liam's death (operative), as in R v. Malcherek & Steel, where it was held that original injuries were still an operative cause of victim's death. However, it may be argued that a *Novus Actus Intervenis*, an intervening event, caused Liam's death and that Archie is not the main cause. This is only partially true, as the ambulance's brake failure was the last event of the chain of causation and causing Liam's death. Yet, Archie can still be held liable if it can be established that there was a break in the chain of causation, however, there is none. Thus, the ambulance accident was merely a negligent contribution, as in R v. Benge, and Archie's act is the cause of Liam's death.

According to the *mens rea* of murder, proof of intention to kill or cause grievous bodily harm must be shown, as established in R v. Moloney, holding that intention may be inferred from the defendant's foresight of consequences. Here, the charge will depend on Archie's intention, which might be deduced from the words that he muttered: 'rid himself of the problem for all time'. As such, Archie knew the consequences of his actions, and had an intention to carry it out. Yet if this is the case, it must also be considered why Archie didn't actually carry out his apparent intention, to 'rid himself of the problem for all time', as he did not actually 'get rid of' (ie. kill) them. However, if this is not the case, it can be said that Archie's intention can be found if he foresaw death or GBH as a virtually certain consequence, as in R v. Woollin. It is also not known where and the number of times Archie shot at Liam and Craig, as this would confer an indication of any considerable intention. If Archie's shooting was limited, perhaps one or two in the leg, then it can be said he had no intention to kill, but just an intention to frighten.

If he only had an intention to frighten, then his act is already an unlawful act in itself, as it is dangerous and is foreseeable to cause harm. This is true with Archie, and he also had the intention to commit the unlawful act, as in R v. Lamb, where the defendant did not have the *mens rea* to kill, but only to shoot the gun. Archie's act was also dangerous, likewise in R v. Church where it was held that 'dangerous' would mean a reasonable man realizing the risk of creating some harm. In DPP v. Newbury & Jones, it is said that if the accused "intentionally commits a dangerous and unlawful act, causing harm or incidentally, the death, of another", he is then guilty of constructive murder. Therefore, in relation to Liam's death, Archie can be liable for constructive manslaughter.

In relation to the injuries sustained by Craig, there is the possibility that Archie will be charged under **Section 20 of the Offences Against Persons Act 1861**. The *actus reus* required here is merely wounding, as defined in JJC v. Eisenhower as "breaking of the skin" (skin here meaning any surface of the human body) or inflicting grievous bodily harm. The *mens rea* necessary includes a malicious intention and a foresight of physical harm. This foresight must involve the possibility of some physical harm to a person, as in R v. Mowatt. Archie, thus fulfills both the *actus reus* and *mens rea* for S20 of the OAPA. However, Archie may also be

charged under **Section 47** and **Section 42**. Under **S47**, Craig has to be seen to have sustained “actual bodily harm”, defined in R v. Miller as “any harm calculated to interfere with person’s health and comfort.” Under **S42**, Archie has to be seen to “put another person in fear of immediate personal violence” and has “touched another without their consent.” If this can be established, Archie would be liable for **Section 20** (Offence involving wounding/GBH), **Section 47** (Common assault, battery & GBH) and **Section 42** (Assault & battery) of the **Offences Against Persons Act 1861**.

b. In the case of Liam’s death, Archie would be charged for murder. However, this is rather difficult to prove, as the mens rea required for murder involves proof of intention to kill or cause grievous bodily harm as established in R v. Moloney. Thus, he would not be convicted of murder, but rather involuntary manslaughter, with constructive liability.

As for Craig’s injuries, Archie would be charged under Section 20 of the OAPA. Further charges might include Sections 47 and 42. The conviction under Section 20 is undeniable, but for Section 47 and 42, it is only highly plausible.