

Murder: Causation Homework Model Answer

Vicky had enough of her husband, Dave, who was always cheating on her so she decided to kill him by putting an overdose of arsenic in his morning tea. When he took a couple of sips he passed out. Thinking he was dead, Vicky drags him out of the house, bumping his head on some steps leading out of the house. She dumps him in the skip on the street. Dave is found and taken to hospital, where it is discovered that he has extensive brain damage, few days later the doctors decide to turn off his life support machine.

Discuss whether Vicky has the actus reus for Dave's death include any causation issues.

In discussing whether Vicky has the actus reus for Dave's death, it needs to be established, according to Coke's Definition and CPS guidance, that 'a person of sound mind and discretion unlawfully kills any reasonable creature in being under the King's Peace.' Unlawful killing is death caused without any lawful reason and can be committed by a voluntary act but can also be an omission, where there is a failure to act when there is a common duty, causing the death of a victim. When Vicky puts an overdose of arsenic in Dave's tea, this clearly amounts to an unlawful voluntary act (**Hill v Baxter**) by Vicky.

Furthermore, for the actus reus of murder, the victim must be a human being. The CPS defines 'being' as someone 'born alive and breathing through its own lungs.' The modern approach seems to be that death occurs when all electrical activity ceases in the brain, as demonstrated in **Malcherek and Steel**, and in **Airedale v Bland**, where both victims were in permanent vegetative states and brain-dead; these were considered by courts as already legally dead. Thus, switching off the machines by hospitals did not cause the death of victims. Similarly, Dave was legally dead before the doctors switched off his life support machine, and thus, it did not cause his death.

Moreover, murder, being a result crime, requires causation to be established, demonstrating that Vicky's conduct actually caused Dave's death. Under factual causation, the 'but-for' test applies (**Pagett, White**). Had it not been for Vicky overdosing with cyanide in Dave's tea and then dragging his body, bumping his head on the stairs on her way out to dump him in a skip, Dave would not have suffered brain damage, and consequently, doctors would not have switched off his life support machine. Also, Vicky's conduct was substantial and operative (**Smith**), more than trivial and certainly the sole cause (**Kimsey**). However, Vicky can argue that the intervening act of the doctors switching off the life-support machine caused Dave's death. Generally, medical intervention does not break the chain of causation unless the treatment was 'palpably wrong' (**Jordan**). Courts usually hold the original act as the operating cause, as demonstrated in **Smith**, which held that there was no break as the original injury was still operating at the point of death. Likewise, in **Cheshire**, it was held that despite the cause of death being due to medical negligence, this would not excuse the defendant from liability unless the negligent treatment "was so independent of his acts, and in itself so potent in causing death, that they regard the contribution made by his acts as insignificant."

Therefore, in considering actus reus for Dave's death, it is most likely that Vicky will be found to have the actus reus. As discussed, Dave was already legally dead when life support was switched off by doctors, and the legal principles of causation indicate that medical intervention will not break the chain of causation.