

Elijah suffered from extreme paranoia which caused him to believe that his neighbours, Fern and Gianni, were trying to harm him.

Armed with a knife, Elijah entered his neighbours' house late one night and went upstairs. As Elijah looked around, he was disturbed by Fern, whom he grabbed and forcibly pushed down the steep staircase. The fall triggered a serious response in Fern's pre-existing brain condition and she died shortly afterwards. Fern was three months pregnant at the time and the fall also killed her unborn child.

Consider whether Elijah has the **actus reus** including any causation issues for the murder of Fern and her unborn child. (5 marks)

Indicative content

AO1

- Identification and outline explanation of the actus reus and mens rea for murder (unlawful killing, reasonable creature in being, under the Queen's peace **with malice aforethought**) including identification of causation issues.

AO2

- Application of the facts to suggest that Elijah's conduct has satisfied the actus reus for murder in relation to Fern as he pushed her down the stairs which brought about her death. However, he does not satisfy the actus reus for the murder of the unborn child or Gianni as they would not be considered, in law, to be 'creatures in being'.
- Application of the thin skull rule in relation to Fern's pre-existing brain condition to conclude that the condition would not break the chain of causation.

AO3

- Analysis and evaluation of the rules relating to reasonable creature in being (**A-G Ref NO. 3 OF 1994**).
- Analysis and evaluation of the rules of causation in relation to the thin skull rule.

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In considering whether Elijah has the actus reus for the murder of Fern and her unborn child, it needs to be established under 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 it can also be an omission, where a failure to act when there is a common duty causes the death of a victim. When Elijah forcibly grabbed Fern and pushed her down a steep staircase, resulting ultimately in her death, this amounts to an unlawful voluntary act (**Hill v Baxter**) by Elijah.

Additionally, for the actus reus of murder, the victim must be a 'creature in being'. The CPS defines 'being' as someone 'born alive and breathing through its own lungs'. In **AG (No.3 1994)**, the court held that D could not be convicted of murder as a result of harm done to a child in utero because, at the time of the attack, the foetus was not classed legally as a human being. Similarly, courts will not consider Fern's unborn child as a creature in being, unlike Fern herself who was a human being.

Furthermore, murder, being a result crime, requires causation to be established, demonstrating that Elijah's conduct caused Fern's actual death. Under factual causation, the 'but-for' test applies (**Pagett, White**). Had it not been for Elijah forcibly grabbing Fern and pushing her down a steep staircase, triggering a serious response, Fern would not have died shortly afterwards.

Murder: Causation Structuring Exam Question

Under legal causation, Elijah's conduct was substantial and operative (**Smith**), more than trivial (**Kimsey**), even though he may not be the sole cause (**Kimsey**). However, Elijah can argue that the intervening act of Fern's pre-existing brain condition caused her death and broke the chain of causation. Under the thin skull rule, the defendant must take his victim as he finds him. This applies particularly to vulnerable victims. The defendant is fully liable for the consequences to them even if an ordinary person would not have suffered such severe consequences, irrespective of whether the defendant was aware of the condition. In **Hayward**, courts held that despite a pre-existing medical condition, the defendant's actions remain the operating cause of death, even if that condition be known or not. Similarly, in **Blaue** a pre-existing belief did not break the chain of causation.

Consequently, Elijah's actus reus for murder is satisfied for Fern's death, and the chain of causation is not broken due to the thin skull rule. However, the actus reus is not satisfied for Fern's unborn child as the courts will not be considered it a 'creature in being'.