

Late one night and armed with a gun, Carla was driving around her neighbourhood. As Carla approached a crowded fast-food restaurant, she saw a man (Denton) standing in the doorway. Carla fired three bullets towards the doorway and sped off. The bullets missed Denton but one hit and killed Emma, who was inside the restaurant at the time.

Advise Carla of her criminal liability for the murder of Emma. [10 marks]

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### Indicative content

#### AO1

- Identification and outline explanation of the actus reus and mens rea for murder.
- Identification and outline explanation of the concept of transferred malice.
- Appropriate supporting case law may include: **Vickers, Mohan, Woollin, Matthews and Alleyne, Latimer, Gnango.**

#### AO2

- Application to the facts to suggest that the actus reus is completed when the bullet hits and kills Emma.
- Application to the facts to suggest that Carla had intention to kill or at the least cause serious harm. Developed to discuss that intention could be either direct or oblique (indirect). Possible application to suggest direct intention as Carla was armed with a weapon and fired three times into the doorway of a crowded restaurant where Denton was standing.
- Alternative application to suggest that Carla's aim was to warn/scare rather than cause death or serious injury. Oblique (indirect) intention satisfied if in firing three shots towards people Carla may have foreseen death or serious injury as a virtual certainty.
- Application to the facts to suggest that the mens rea formed in relation to Denton is transferred to Emma and conclude that Carla will be guilty of murder.

#### AO3

- Analysis of the mens rea for murder: intention to kill or cause serious harm, direct/oblique intention.
- Analysis of the principle of transferred malice.  
Credit any other relevant point(s).  
Note: Answers which do not address transferred malice. Max 7 marks.

### Model answer

In advising Clara of her criminal liability for the murder of Emma, the actus reus (AR), and mens rea (MR) of murder need to be established under Coke Lord Justice's modern definition. This definition states that murder is the unlawful killing of a human being under the king's peace with malice aforethought, either expressly or impliedly. The AR elements require the proof of an unlawful killing (**Clegg**) of a human being (**Malcherek**) under kings' peace, which can be either voluntary act (**Hill v Baxter, Woolmington**) or an omission under common duties. When Clara fired three bullets towards the fast-food restraint doorway and sped off, this clearly constituted an unlawful voluntary act. Furthermore, this is consolidated with her using a lethal weapon, shooting a gun where one bullet hit and unlawfully killed Emma, a human being, thereby satisfying the AR.

## Murder: Exam Question Model Answer

Under factual causation, had it not been for Clara firing three bullets towards a crowded fast-food restaurant Emma would not have been killed, satisfying the "but for" test (**White**) and demonstrating foreseeability (**Pagett**). For the accompanying legal causation, Clara is the substantive and operative cause of Emma's death, as her conduct was the sole factor leading to Emma's death. Her actions were more than trivial (**Smith**) and were significant in causing her death. Additionally, there are no intervening acts that break the chain of causation, thereby satisfying causation.

The MR elements require the proof that Carla had the malice aforethought either expressly or impliedly, which is either the intention to kill (**Janjua**), or the intention to cause grievous bodily harm (GBH), (**Vickers**). Furthermore, intention can either be direct (**Mohan**) where the defendant's aim, purpose and desire to bring about the prohibited result, or indirect (**Woollin**), where the consequences is virtual certainty of defendant's action and the defendant appreciated that certainty. When Carla fired three bullets towards doorway where Denton was standing. This suggested that Carla at the very least intended to cause GBH, as she is shooting into a crowded restaurant doorway, and she fired not one but three bullets. However, if courts find it difficult in establishing that Carla had direct intention to cause GBH as she may argue that she was scare Delton rather cause injury. Moreover, jury may find indirect intention to cause GBH (**Mathew and Alleyne**), that serious harm was virtual certainty consequences of Carla's action when she shot three bullets into a crowded restaurant where people were standing, and Carla must have appreciated that someone would seriously be hurt even if she argues she wanted to scare rather than cause GBH.

Furthermore, Clara may argue that her intent was originally aimed at Delton and therefore does not satisfy the MR elements for Emma. In this situation, the courts will apply the doctrine of transferred malice, as demonstrated in the case of **Mitchell and Latimer**, where if a person causes injury or death to a person other than the victim intended, they can still be liable for the offence they intended. Since, Clara's shooting at Delton resulted in Emma being hit and killed, the malice is transferred to Emma, satisfying the MR for murder. In conclusion, Clara could be found liable for Murder of Emma. If the jury finds that she acted with either direct or indirect intention to cause GBH, and courts apply the doctrine of transferred malice. Emma would receive a mandatory life sentence with a minimum term of 15 years.