

LAW

TRANSITION RESOURCES

EXAM BOARD: AQA

Learning the law

You have chosen to take up the mantle of many thousands of lawyers who have come before you, and hopefully before you start, this short introduction to key terms and a real murder case puzzle will teach you three things:

- 1) Where English law comes from
- 2) Where it is today
- 3) Why you should never trust 40 year olds who have an overly fond attraction to sweets.

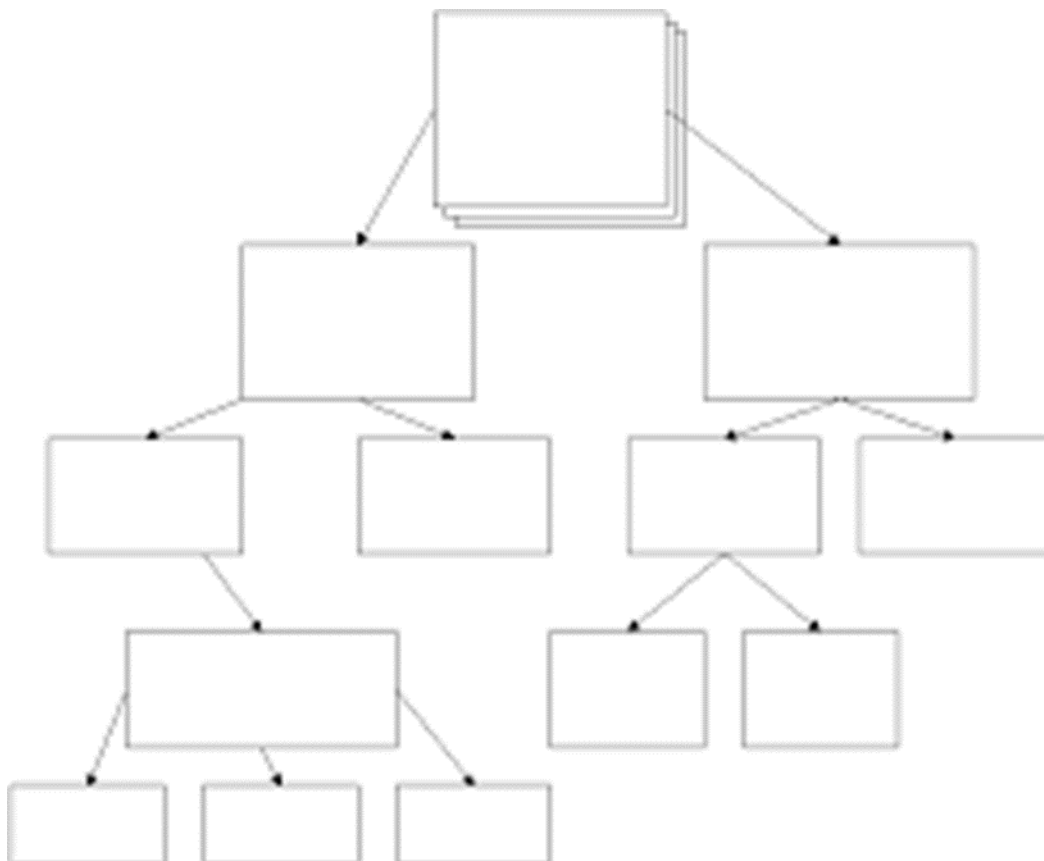
Murder is, and remains, the most heinous of crimes one can conjure up (although, interestingly, not the worst in English law- that is reserved for High Treason, which still carries the death penalty). It is this reason that, whilst here I will give a brief history and summary of English legal principles, I will talk mainly about the progression of murder, and how it has evolved through the centuries. Before that however, there are some tasks for you to complete and read through to ensure that you understand the core elements of legal litigation, including causation, the operation of the court room, and the key terms for parties engaged in the legal process.

Criminal and Civil Court Structure

Task 1- Both criminal and civil law have their own individual court structures. You need to create a flow diagram for each; one for criminal and one for civil law.

Task 2- now you have your flow diagrams, for each court write a brief description of the types of cases they see, and what their role is. For example, are they an appeal court?

Task 3- look up the different legal personnel who would work in each court along the diagram.



Causation, factual

Who is responsible?

Read through the scenarios and decide who is responsible for the victim's death.

- Carol pushes Alan down the stairs, and he sprains his knee. He goes to hospital where they administer the wrong medication. He has an allergic reaction and he dies.
- Hannah was stabbed by Jack, and she needed a blood transfusion in order to survive. Hannah was a Jehovah's Witness, and her religious beliefs would not allow this. As a result, she died.
- Don is on life support. The nurse switches it off accidentally one day, ending Don's life.
- Pete and Rich were throwing rocks at each other. Pete used his brother, James as a human shield. The rock thrown by Rich hit him, and James dies.

Difficult, wasn't it? Here we are looking really at the core of law- who caused what, and is it their fault?

Factual Causation



The 'but-for' test

The D can only be guilty if the consequences would not have happened 'but-for' the D's actions

Here are some example cases from real life for you to see how lawyers find causation. PLEASE NOTE HERE!!!! You may hear of things in other subjects called 'case studies'. Please never call legal cases 'case studies'.

These cases are not here for you to learn about, nor are they here as merely an interesting academic point as in other subjects: 'case' refers to the legal term 'Re (itself Latin for the matter/thing of)' and is the official term for the charging and bringing to trial of a miscreant, or for the legal battle betwixt two parties. Not a study. Real legal consequences.

1. R v Pagett

- **FACTS** Pagett was a known criminal, and was wanted for a multitude of crimes, including illegal possession of a firearm. The police raided his property, and were armed in preparation. P opened fire, and the police fired back, this exchange going on for some time.
- **RATIO** P then exited the property, pulling his pregnant girlfriend out in front of him, firing at the police. A police officer fired back, hitting and killing the Girlfriend. Pagett was held to be the

factual cause: but for him using her as a human shield, she would not have died.

2. R v White

- White lived alone with his mother, and was furious that he could not get a girlfriend. He became increasingly depressed at his situation, and came to blame his mother for his continued troubles- he thought women would not want him due to mother living in the attic. In addition, He would inherit the house should his aged mother die. He waited. And waited. Her 70th came. Her 80th. Her 85th ... White snapped, and bought rat poison (arsenic) to poison his mother. He made her a cup of tea, and poured enough poison into it for kill 18 people. He went upstairs, only to find out that a few minutes before, his mother had died of a heart attack. The police arrived and immediately sussed his plan, and arrested him.
- Ratio: White was not the factual cause of death as he never administered the poison. But for his she would still have died. Not guilty.
- The D can only be guilty if the consequences would not have happened 'but-for' the D's actions.
 - R v Pagett- but for using his girlfriend as a human shield against police, she would not have died. Factual cause.
 - R v White- not the factual cause as his mother would have died regardless of his poisoning attempt.

Practise time!

Write a short paragraph outlining what is meant by factual causation. 5 marks

Content	Mark
General overview of factual causation. Brief reference to cases	0-2
Detailed description of factual causation, supported by relevant case law.	3-4

Remember:

1. There must be a definition (2 marks)
2. An example in law (1 marks)
3. An attempt to examine or explain that example to match it to the definition.
(2 marks)

Legal causation

Legal Causation



The defendant must be more than a 'minimal' cause of the consequence

There are two versions of this.

'Multiple cause' and 'novus actus interveniens'. We'll park the second one for now, as you'll need to learn about that in class.

Multiple cause theory states that where there are two possible causes of injury (normally death), both people who were the responsible for the causes can be responsible, provided that what they did was not 'minimal'.

For example, let us say a person was killed when they were hit by a lorry causing blunt force trauma to the skull. But, moments before they were hit by the Lorry, a person had slapped them in the face. There are two possible causes of death- but is the slapping simply 'causa de minimis?', a 'minimal cause'?

Here is a case example to consider;

R v Kimsey-

D and a friend were involved in a high speed car chase. It is unsure what happened just before she lost control of her car, and a post mortem uncovered a heart attack in the other driver who she was accused of killing moments before the collision. The trial judge directed the jury that the D's driving did not have to be 'the principle, or substantial cause of the death, as long as they were sure that it was a cause and that there must be something more than a slight or trifling link'.

In other words, your actions do not have to be the MAIN cause, nor do they even have to be SUBSTANTIAL, so long as they are not a CAUSA DE MINIMIS (a minimal cause)

E.g. flicking someone on the nose is minimal compared to a fatal gunshot.

Now you have some of the basics, you can read through this work on murder, and have a go at solving the case at the end.

A hazy beginning 1st to 4th Century AD

A rather short history of English law might look like this: stab stab stab, celts, stab stab stab druid, some more stabbing, then Roman law, then little more stabbing, Anglo Saxon juries, Feudalism and judges, more stabbing, and possibly some shooting as well, The Imperial export of law and order, a little less stabbing, then the best legal system in the world, Judges rocking stupid wigs in the 21st century. Unsurprisingly, this is not the whole picture.

In this early period, Roman law was used daily in the Kingdom. Today, many of its legal principles are still quoted in cases, and you will have to learn them, in the original Latin language. Such examples include;

novus actus interveniens-a new act intervenes (i.e I might have hit the bus full of orphans with the truck but I promise that the maddened honey badger killed them before I got there, he intervened you see)

Volenti non Fit injuria- He volunteered for his own injury (His bloody fault, he knew I was running in circles with that samurai sword)

Res ipsa loquitor- The case speaks for itself (or in more modern English for the reader, "It's obviously a whack situation innit dawg?") For example- I don't know what you did, or how you did it, but your plane is now in my garden and it's wrecked the mulberry bush, pay up now'

Bonus one you don't have to learn unless you want an A- Vigilantibus non dormientibus aequitas subvenit* Law does not help the idiot. i.e, if you were a moron, you get nothing and no help from me.

More intriguing however was the Roman law on murder. It is found under the Lex (law called 'Lex cornelia de sicariis et veneficis', which means, "A law for the punishment of assassins and poisoners'. Effectively it outlines three different levels of murder with *dolus malus* (an evil mind- i.e. you meant to kill).

1. Killing a free-man with an evil mind- Death penalty.
2. Killing a family member with an evil mind
 - a. Dad- sewn up in a bag of starved rats, thrown in a river
 - b. Mum- death by partition
 - c. Brother/sister death by sowing into a bag of snakes and thrown in a river
 - d. Child Death by sowing into bag of scorpions (HOW DID THIS WORK IN BRITANNIA??), then thrown into river
3. Killing a Slave with an evil mind- Death penalty (YES!!! Roman slavery is not what we imagine it as today, and slaves DID have some rights! Killing a slave was seen as equal to killing a free-man).

In a shocking twist, an empire run from Italy ran into financial issues and dissolved into mafia-style in fighting, leading to the invasion of the Saxons, who brought their own legal codes with them, and married them to the pre-existing Roman law.

Everyone do the Anglo-Saxon shuffle- 4-10th centuries

Anglo Saxon law, with all the crazy, odd laws regarding inheritance (split equally between all children including women) insane laws about 'letting females and children speak in court' and 'you can only be found guilty if jury of your peers finds evidence and convicts you' is eerily close to a modern legal system.

But it had some... oddities.

So, Anglo Saxon law incorporated many of the roman elements, but introduced juries- local men (AND WOMEN... AND CHILDREN... AND IN ONE CASE A WOLF WHO WITNESSED THE CRIME) who decided if a person was guilty based on the facts. Commonly these juries were up to a hundred people, but later this was reduced to 12, as the poorer folk could get taste for this 'voting' thing, which would be rather dangerous for those of us with nobler blood....

Nevertheless, the Anglo Saxon system ensured equal treatment in court, and this idea that you can demand a jury, no matter the offence, comes from this time. Even today, many people who want to get out of those pesky speeding fines can demand a jury trial... and not many juries of ordinary people will convict you!

However, As regards murder, the Anglo Saxons were also deep thinkers. Now, many of us today consider that there can be no price on a human life. This is silly. The price of a human life is exactly 600 Shilling-geld. The Saxons told me so. Genuinely, if you murdered someone, ("To slaughter a man with intent to do so") there was a quirk in Saxon law which allowed the family of the murdered person to choose your punishment- Death by hanging, pay 600 Shillings, called "Blud-geld" (blood-gold) or let you go free (with the understanding that the family could legally declare a blood feud on you and kill you with no legal consequences). For this reason, often families would chose the second option- and the murderer who had no money may have to sell himself into slavery for a number of years of the family to pay off the debt.

Here come the Normans and the knights (WHO ARE NOT FRENCH- your history teacher lied to you.) 10th-14th centuries

1066 and the battle of Hastings yada yada yada, a group of VIKINGS who had settled in Normandy (NOT a historic part of France at the time, no matter what your lying French teachers think...) came across and imposed their new laws on the land. They mainly concerned land laws, as the Normans thought the Anglo Saxon system using juries etc was great. WE still have their land law today- you might have heard of a land lord? Well yes, because the owner of the house is officially a Lord of the manor- he "owns" it in service to her majesty the Queen, who is the real owner of all the land. If you or your family are 'tenants' this is simply another word for 'peasant'. Words such as 'mortgage' (ask your parents) are Norman words for example.

The Normans did try to bring in their own idea of trials without juries- trial by ordeal, in which a person would swear he had done no wrong on a Bible, and then would hold or run on white hot coals. If he was saved by God and didn't get burnt, he was innocent. Alternatively, the person could be tied up and thrown in river. If they sunk, they were innocent, but if they floated the devil helped them, so were guilty. (You at all seeing an issue with this one?)

Not surprisingly, this Trial by ordeal was not popular, and did not last long.

The Normans also attempted to bring in Trial by combat, which allowed you to duel your accuser- the victor was innocent. AMAZINGLY this was never outlawed- in 2015 a 58 year old man was accused of stealing grapes at a Tesco's in Birmingham, and demanded trial by combat (he had been caught on CCTV so a Jury would most certainly have convicted him). Sadly the case was dropped, but the court did affirm that the laws of England allowed this- then pleaded the government to fix this loophole! I personally would have loved to see Terry from the Tesco's' meal deal aisle duel Big Bad Barry over some grapes, but alas, 'twas not to be.

The Normans did abolish the death penalty, rather bizarrely, and the idea of blut-geld, but kept life imprisonment for murder.

Kings Castles and Empires 15th-18th centuries

And here we come to the modern day.

Yep. Modern day. Our law on murder comes from this period, and has not changed. Oddly enough, judges still have to sentence people to death... then transmute this to life due to this mishap of history!

In this period the death penalty was brought back with a vengeance under something we will study in your next year- The Bloody Code. You see, it was all so very simple... one might imagine the conversation going like this....

Servant: 'There are lots of criminals sire- too much for the prisons'.

King 'What if we fine them more, and build more prisons?

Servant 'Ooh, very costly. It'll cost millions! And there is nothing to stop them reoffending and committing more crimes once they're out!'

King 'hmmmmn. What are the cheaper options then?

Servant: 'Well, there is hanging sire. Rope only costs a few pennies'

King: 'Ah, much better. Cheap. Cheap is good. Hanging it is!'

Servant: 'So, death for murderers then sire?

King 'No no, why stop half way?? Death for all crimes my good man! Empty out those prisons! Make some room!'

Servant: What about the children???

King 'Even better, the rope won't need to be as long'. *sits back and smiles with a job well done. Children scream faintly in the distance*

Later, a new cheap option was added that was almost worse than the rope- transportation to Australia. Who needs to build a prison when the almighty has already done the work for you- and filled it with poisonous spiders and snakes?

Effectively our law of Murder is drawn from a book written by Lord Coke (pronounced Cook, and not like the famous soft drink) in 1591, and it reads...

“Murder is the unlawful killing of a reasonable creature in being under the Queen’s Peace with malice aforethought express or implied”

So, there are three parts to the ACT you need to do, and two parts to the THOUGHT you need to have whilst you do it (intention/motive to you and me!):

ACT

1 You have to unlawfully kill

2 the person you kill must be reasonable creature in being- this means that they must be born, and that they must not be brain dead.

3 You are allowed to kill in a warzone, you are allowed to kill an enemy combatant and you are allowed to kill an outlaw, like Robin Hood.

INTENTION:

Malice aforethought simply means intended to kill, or cause grievous (serious) bodily harm.

Express (direct intent)- you really meant to do it. You were thinking about it all evening, and you really, really, really, really, really, really wanted to see the colour of their insides.

Implied (indirect/oblique intent) You decided to attack someone not to kill them or to cause them harm, but perhaps for another reason- like escape or you were in the middle of robbing them when it went wrong, and you needed to flee- but when you shot at them/or threw the knife/dropped the anvil/grand piano you foresaw that the person would die. You didn’t want them to, but you knew that they would.

Here is a couple of well-known example of both types.

Express;

R v Mohan 1975- Mohan was driving at slow speeds along a country lane. He was angry that he had got a parking ticket, and had been told that the officer that ticket him was in the area. He spotted a police car at the side of the road, and the officer walking down a street of parked cars. Mohan aimed his bonnet ornament (for he drove a Mercedes) directly at the officer, and accelerated, toying with the officer, until finally mowing him down. Mohan then reversed back and forth over the officer until he was dead.

Here, we can see that the elements are all fulfilled. Mohan killed unlawfully (it wasn't exactly self-defence was it?), the officer was born and was not brain dead when Mohan attacked, and the officer was obviously not an outlaw (as much as we all despise officers who give out parking tickets). Mohan clearly wanted to expressly kill/badly injure him at the time- he aimed, accelerated and reversed over him.

Express;

R v Vickers. Vickers really liked sweets- the only issue was that a) he had no money and b) it was 1 in the morning. Vickers, a 40 year old man, went down to the local confectioner, and broke a window. He knew the old woman who owned it was deaf, so he probably wouldn't be disturbed, but just in case one of her sons was t home, he took a cricket bat with him. Unfortunately, Vickers hd not reckoned that the old lady was still up, doing her accounts. She noticed the disturbance, and followed Vickers as he feasted on sweets. She began to holler and scream at him, so Vickers turned around and ordered her to be quiet 'or else'. The old lady refused, so Vickers beat her until she stopped screaming. Permanently. Once again, the requirements are all fulfilled here, but most importantly, at the time he began beating her, Vickers clearly intended, if not to kill her, but to cause some very serious harm.

Implied (oblique intent)

R v Nedrick

Nedrick really hated this woman, let us call her 'Karen' at work. I don't mean 'oh she sends too many pointless emails' or 'stupid Karen, always snitching on me', I mean Nedrick wanted to see her suffer for the weeks of bullying and harassment she gave him at work. So, he decided to push a burning bag of excrement doused in paraffin oil through her letterbox. Nedrick did not realise that Karen had a baby. The burning bag set the entire house alight, killing the baby inside.

Here, it is clear that Nedrick does not intend to kill- but did he foresee the death of the child, or of anyone? No. He picked a time he knew Karen would be out, and thought the place was empty. He is not a murderer.

R v Matthews and Alleyne. M and A were bullies. Specifically they wanted to bully poor Joe. They cornered him beside a river, and started throwing his things into the water. He begged them to stop, so they told him 'it if bothers you, jump in after them'. Joe informed them that he couldn't swim. M and A, hearing this for the first time, on the spur of the moment thought, therefore, of a brilliant new game. It was called 'Toss Joe into the river against his will, because it'll be a laugh'. Kicking and hollering, Joe was thrown into the river. M and A watched as first he thrashed, then twisted, then sank below the surface. In a panic, they ran from the scene.

Here, again they have killed a reasonable creature in being unlawfully, but more importantly, their intention was not to kill- they merely wanted Joe to suffer for their amusement. BUT. M and A had been informed that he couldn't swim. What can one easily foresee if one throws a non-swimmer into river? Death. M and A were clearly guilty therefore.

A Murder most foul

Your task

Consider the following facts, and see if you would convict this man. This is obviously a totally genuine case-

The Accused, Alice Hart of England, Shropshire, was ordered to leave the country, by means of the portal from which she came. Having done so, she found herself to be dragged, without consenting, back over the borders into our Kingdom. From this point, she contrived to attack the Queen, so that she would be able to go home. Thus she came up with a plan: kill the Queen of Hearts with a Croquet mallet, whilst her accomplice one W. Rabbit, Mr, of Wonderland, did strike her down with his pocket watch, lashed against her face. The Queen was latterly taken to Mad Hatter hospital, Where Dr. Hatter, also of Wonderland, did negligently allow her to bleed out whilst having his tea-break. Escaping from the crime scene, A Hart and W Rabbit took their vehicle and, with A Hart driving, swerving across the road on the right hand side (Wonderland being a left-hand drive society as is any proper country) ploughed into a school bus full of sentient orphaned singing Puppies, killing Rabbit and the puppies instantly.

Is Hart:

Guilty of the murder of the Queen?

Guilty of murder as regards Rabbit?

Guilty of murder as regards the Puppies?