

Eduqas A Level Law - Component 2



0 1

In this case Emma can^{not} refuse to pay for the camera. This is due to the fact that a contract has not been formed between Daniel and Emma. In order for a contract to be formed the offer and acceptance must be clear, ~~seri~~ certain and communicated as stated in the case of Bindley v Felt-house. In this case the uncle of the horse owner claimed that "If you don't speak I will take it that the horse is mine". However, the courts held that silence does not amount to acceptance so there was no contract and he did not have ownership over the horse.

In the case of Daniel and Emma the offer made was uncertain and unclear as Emma handed it to him as he was leaving the shop. Additionally Emma had previously repaired Daniel's camera for him so he would not have been expecting that she would make such a contract with him.

As for communication, it states that she just handed him a piece of paper and doesn't mention whether she explained the offer to him and whether he had the opportunity to accept it. Therefore, if we take the scenario as it is, which shows no signs of communication verbally, then Emma and Daniel do not have a contract because he did not accept ~~by~~ it. As stated in the case of Felt-house v Bindley, "silence does not amount to acceptance".

As a result, there was no binding

Contracts between Daniel and Emma and so she can not refuse to pay him.

However, it could be argued that the fact that Daniel took the paper and ~~read~~ ~~have~~ read it, as it had a repair number on it to identify his camera, that this was actually an acceptance to her offer. This is because Daniel did not ~~offer~~ give a counter offer, which would have overruled her original offer, or he did not refuse the offer. Instead he must have read the clause, meaning he was aware of what Emma's offer was, and took the paper home which Emma must have automatically assumed that he was accepting her offer.

However, if you look at the scenario this way then Emma can refuse to pay him for the camera because the clause states that you must report anything wrong with the camera "within ~~the~~ 24 hours of collecting it". However, Daniel took the camera back to Emma a few days later meaning there was a lapse of time as he did not go by the time frame proposed in the 'contract'. As a result, Daniel may have breached the contract as he went against what it was saying and what he may have accepted to;

In conclusion, if you take Daniel taking the paper home, and not refusing it, as an acceptance, then there was a contract and Emma would be protected by it.

0 3

To advise Gory on legal action which he may be able to make, the correct claim would be in negligence.

To establish a claim in negligence, three things would ^{need to} be established: a duty of care, a breach of that duty, and damage caused by the breach. These will be inspected in turn.

Donoghue v Stevenson established the neighbour principle and began the modern law of tort. A woman found a decomposed snail in her ginger beer, and afterwards, suffered physical and psychological harm. Lord Atkin held that a neighbour owes a duty of care for other neighbours, 'that who is so closely affected by actions' that they should be considered when acting.

Firstly, to establish a duty of care, the Caparo Requirements will be utilized from the case of Caparo v Dickman. A duty of care arises when ~~there is~~ ^{it is} a reasonably foreseeable that they would be affected by actions, there is sufficient proximity, and it is fair, just and reasonable to impose a duty.

The case of Kent v Griffiths identifies the concept of reasonably foreseeable in relation to a duty, and it was held it was reasonably foreseeable that a man who suffered an asthma attack would suffer more harm when the ambulance arrived 40 minutes late.

Proximity is defined as time, space, or relationship. In Bourhill v Young, proximity wasn't satisfied when a woman, who heard a ^{motorbike} crash, went over 50 yards to inspect it. She suffered from shock and miscarried her child, but proximity didn't exist as she was not on the scene when the crash happened. She inspected it afterwards. Further, in the case of McLoughlin v O'Brien, proximity did exist when a



mother suggested shock after witnessing her children and husband who were involved in a crash. Even though she wasn't present at the crash, proximity was fulfilled by the relationship which existed.

Fair, just and reasonable asks if it is right to impose a duty. Capital Counties held it was fair to impose a duty on the fireman who switched off the sprinklers in a fire, causing more damage, yet in Hill v Chief Constable of Yorkshire, it wasn't fair, just and reasonable to hold the police accountable for the Yorkshire Ripper's final victim, as they should be allowed to do their job without ~~unnecessary~~ fear of ~~the~~ litigation.

once a duty is established, there needs to be a breach of duty judged by the reasonable man in the case of Blyth. Then an objective test is created, which asks if the person has fallen below the standards (are expected by the reasonable man, special characteristics will be taken into account (Paris) as well as the magnitude of risk (Bolton v Stone) and it is notable that the standard as expected is lower in an emergency (Day v High Performance Sports). Even further, the risk must be known at the time (Roe v Minister of Health).

If a duty exists that has been breached, there needs to be damage caused due to the breach. Causation (the link between the defendant's actions and the damage) needs to be shown. Factual causation asks but for the defendant's action, would the harm still have occurred? Barnett produced this test. legal causation asks if it is morally right to impose a duty. Even further, the foreseeability of risk will be analysed. Wagon Mound held that the type of damage needs to be foreseeable.

and the Case of Doughty held the damage needs to be foreseeable (asbestos splash causing burns was, get the explosion of the rat wasir). Quite notably, the case of Smith v Leech Brain demonstrates the egg-shell skull rule, which is the idea of taking your victim as you find them. In this case, a burn to a lip caused a pre-cancerous condition to trigger, and the defendant had to take the victim as he found him, meaning he was liable for the damage.

Negligence will be proven if these three things are satisfied (a duty existing, a breach of duty, and damage caused by the breach)

Regarding Gary's circumstances, the use of the Caparo requirements will decide if a duty from Eric to Gary exists. With the handling of boiling hot sugar, it is reasonably foreseeable that burns could occur to a neighbour, and as Gary is a ~~colleg~~ college worker nearby, this is fulfilled. Further, sufficient proximity exists, as satisfied with physical space. Lastly, it would be fair, just and reasonable to impose a duty, as Eric's negligent handling of the boiling hot sugar was the cause of Gary's upset. A duty of care is subsequently proven.

~~diff~~ ~~reach~~ A breach of this duty needs to exist. With the reasonable man test from the case of Blyth, a breach has occurred, by Eric falling below the standard of his profession, the breach exists. However, special precautions could be taken (later) which could negate the breach and the idea of the special non-slip gloves could be seen as a precaution, but he had carelessly lost them, and wasn't wearing them at the time of damage. Thus a breach of duty exists.

The damage caused by Eric needs to have causation and ~~that~~ the foreseeability of risk examined for damage to be linked to the breach. But for ~~any~~^{Eric} spilling hot sugar, Gary would not have suffered a burn to his lips or the inciting of cancer. Factual causation is satisfied, and morally it is right to hold Eric accountable, so legal causation also exists. The foreseeability of risk is inspected, and following the cases of ~~his~~ Wagon Mound and Doughty, the type of damage (~~burn~~^{splash}) was foreseeable in a factory handling boiling hot sugar and the actual damage (burn) was foreseeable too.

One point of argument could use the case of Roe to show the risk needs to be known at the time (pre-contract condition) - yet the application of the Egg-shell skull rule from Smith v Leach brain opposes this (remarkably the case facts are extremely similar) Eric would need to take Gary as he finds him, concluding the damage caused by the breach as sufficiently fulfilled.

In conclusion, a duty of care exists (compared requirements) from Eric to Gary, a breach of duty occurred (Blyth, reasonable man test) and the damage suffered was due to the breach (causation fulfilled with the egg-shell skull rule). ~~It~~

Following this, Gary could take legal action in a negligence claim and should be successful.

0 6

Joe could indeed be liable for Katie's death, however a defence arises in the form of loss of control, reducing the murder sentence to an involuntary manslaughter sentence.

Murder was defined by Sir Edward Coke in 1797 as 'the unlawful killing of a human being with intent and death to occur'. Notably, murder is not defined in ~~the statute~~ ^{statute}, only in case law.

From Sir Edward Coke's definition of murder, we can identify the *actus reus* (physical element of a crime) and the *mens rea* (the mental element of a crime). The *actus reus* is the unlawful killing, human being, death to occur, and under the Queen's peace, and the *mens rea* is malicious intent.

Unlawfully simply means the killing has to be unlawful, so in cases of self-defence (where the killing could be lawful) murder is negated.

The killing is defined as no brain activity, and the brain-dead test from *Malcherek and Steel* is used - death occurs when brain activity subsides, yet ~~not~~ turning off a life support machine does not cause a break in the chain of causation. With killing, both factual and legal causation needs to exist. Factual causation is split into the but-for test (white) and the *deminimis* rule (Mermaid and Muntz). But for the defendant's act, would the victim still be alive? ~~Is~~ asked, and the *deminimis* rule holds that the ~~cause of~~ action of the defendant must be more than a minimal cause of death, but does not need to be the sole cause. Legal causation asks if the defendant's action was the operating and substantive cause of death (three cases of *Cheshire*, *Smith*, and *Tordan*) and the *thin-snell* rule from *Blane* is used. The wound must be an operating and substantial cause of death to satisfy the killing, and in *Tordan* the doctor's worsening the nearly healed wound was 'palpably wrong', shifting the liability from the

original defendant to the doctors, causing a break in the chain of causation. ~~Sh~~ ^{Cheshire} held that even though the victim was wounded negligently by doctors, the gun shot wound was still the operating and substantial cause of death.

A human being was defined in *R. Poulton*, and a baby has to be fully expelled from the mother for it to be considered a human being, thus ~~murder~~ ^{the killing} of a baby inside a pregnant woman can't be murder, but another offence with transferred malice (*Attorney General's reference no 205 1993*).

Death to occur ~~it~~ used to mean the victim had to die within a year and a day rule (a year and a day rule) for the act of the defendant to have been considered the cause of death. This was changed and removed however, but now murder charges in which the victim died after 3 years have to be approved by the Attorney General.

Queen's Peace simply means killing an enemy during war-time is not murder; it is lawful.

With the actus reus being explained, the mens rea can be split into ~~implied~~ ^{express} malice (the intention to kill) or implied malice (the D's actions have resulted in death of the victim). Intention can further be split into direct intention (murder as the main aim of the act) or indirect intention (death was not the main aim of the act, yet death was a risk). With indirect intention, the virtual certainty test will be used (from the case of *Nedrick*) and if the death was a virtually certain outcome, intention can be found. Notably, the case of *R. Vickers* where the defendant ~~grossly~~ ^{horribly} beat an old woman up and pushed her down the stairs resulting in death from GBH. Held that intention to cause really serious harm resulting in death (GBH) satisfies the mens rea.

In Joe's case, his Mens rea would be satisfied with the intention to cause GBH (following vicars) and the actus reus would be fulfilled also (the hitting was not in self-defence or during war time, the victim died). Even though ~~the~~ her life could've been saved, the failure to seek medical treatment is overruled by the huge bruise being the operating and substantial cause of death, and but for Joe's actions, she would be alive. Causation is thus satisfied. However, a defence of loss of control could be pled, reducing murder to manslaughter.

S54 and 55 of the Coroners and Justice Act 2009 replaced provocation (s3 Homicide Act 1957) as a partial defence to murder. 3 things need to be proven: a loss of control occurred (S54(2)+(4)), a qualifying trigger existed (S55(3)+(4), 6(a)+(c)), and that a reasonable person of the defendant's sex and age, of reasonable firmness and of rational self-control, in the same or similar circumstance would've acted the same (S54(1)(c)).

For the actual loss of control, S54(2) holds that the loss need not be sudden and S54(4) holds it excludes a defendant who acted in revenge. Under S54(2), Joe's loss of control was sudden, but it was due to a build up of constant criticism from Kevin. This sudden loss is irrelevant, as Joe did have a loss of control regardless of it being sudden or not. S54(4) excludes a defendant who acted in revenge (the case of R Ibrahim and Gregory), but it doesn't appear the loss of control was fueled by revenge; Joe just reached his breaking point and Katie knocking him caused him to lose 'all self control'. A loss of control exists.

The loss of control needs to be from a qualifying trigger. S55(3) is when a defendant had a fear of serious violence from the victim - which is subjective, and S55(4) is things said or done which were of extremely grave circumstances that gave a justifiable sense of being seriously wronged which

is objective, S55(6)(ab) of excluding S55 inducement and S55(6)(a) of excluding sexual insideling as a trigger (R v Clinton) are largely irrelevant here and do not bear weight for Joe's situation. With Joe being the defendant and Katie being the victim, S55(3) of serious violence would not apply, as Joe did not have a fear of serious violence from Katie - she simply recruited him in the game. This means the qualifying trigger has to be things said or done under S55(4) for Joe, with things said by Kevin and things done by Katie (hacking), it could be seen as Joe reaching his limit for verbal abuse and Katie's act could've caused Joe to ~~release~~ release the ~~so~~ build up in a sudden rage. I believe there are grounds for a qualifying trigger under S55 for Joe to have lost his control. Contrary to that of the outcome in Hatter, where he had no sense of being wrayed due to committing a burglary at the time of the defendant's loss of control, and of Zebedee where no qualifying trigger existed, Joe satisfies the second loss of control requirement.

Under S54(1)(c) lastly, the objective test asks if a person of same sex and age, of reasonable firmness and rational self control, and in the same or similar situation would've lost control. Objectively speaking, everyone has a limit for verbal abuse and if someone in Joe's shoes would've done the same or similar things. Unlike in DPP v Camplin, ~~no~~ it was held that a reasonable 14 year old in the defendant's shoes would not have struck the victim with a Chhatti pan resulting in the victim's death.

Conclusively, the elements of homicide (murder) all exist in Joe's situation (the unlawful killing of a human being under the Queen's peace ^{and} ~~and~~ death to occur with the intent to kill or cause really serious harm (R v Vickers)) exist. However, the partial defence of loss of control could be pleaded ~~for~~ ^{by} Joe. He had a loss of control resulting from

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2 a qualifying trigger and ~~objectively~~, a ^{reasonable} person would be acted the same way. This means that the mandatory life sentence of being guilty of murder would be avoided and replaced by a lesser sentence of involuntary manslaughter following the successful pleading of a loss of control by Joe.

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07

The Police and Criminal Evidence Act 1984 (PACE 1984) gives guidelines for Police to follow and procedures to adhere to. The 5 main sections are Stop and Search (Code A), arrest (Code G), detention and questioning (Codes C and H), admissibility of evidence, and complaints and remedies.

Starting with Stop and Search, s1-7 of PACE gives the power to Police to conduct a search in a public place, street, pub car park or a private garden if there is reasonable suspicion that the ~~stop~~ person does not live at the address. PC Smith has used his powers in accordance to s1-7 of PACE, as the search was conducted in the street.

Paragraph 2.2 of Code A gives grounds for reasonable suspicion in search. Personal factors, protected characteristics under the Equality Act 2003, and stereotypes/generalizations (not be used to form reasonable grounds for search. The behaviour, location and time can be used to form grounds however. PC Smith has again adhered to PACE, as the location of Paula's backpack being taken and behaviour of Sergio (over £1000 in his wallet) could constitute to grounds for a stop and search.

However, s213 of PACE gives the procedure which needs to be

Followed when conducting a Stop and Search:

- ① The Name of policeman and Station they are attached to
- ② The reason why a stop and search is being made
- ③ On what grounds the stop and search is being made
- ④ And a record of the stop and search being given ~~then~~ at the time or as soon as it is reasonably practicable. PCSmith did not inform Sergio of his Name and Police Station, the reason and what grounds for the stop and search or a record being made. In this part of the stopping and searching of Sergio, PCSmith has failed to follow the correct procedure under S2 and 3 of PACE. Like the outcome of Osman v DPP where police failed to give their name and station, if this goes to court, Sergio would be acquitted and charges for anything dropped as the correct procedure has not been followed.

Moving on to the arrest of Sergio, it appears at first glance to be lawful, yet in some ways of S28 of PACE have occurred, providing for an unlawful arrest.

Under S24 of PACE (amended by s40 Serious Organised Crime and Police Act 2005) there are 2 requirements for an officer to make an arrest. Firstly there needs to be reasonable suspicion from the constable that the person has committed, is committing, or is about to commit an offence, and secondly, the arrest must be necessary under S24(5). As PCSmith has been told by Paula her £500 has been stolen, upon finding a huge amount of money (£1000) in Sergio's wallet, he has reasonable suspicion that Sergio has committed theft under the Theft Act 1968, and it would be necessary to prompt an effective investigation. D'Hoza v UK gave the two part test for reasonable suspicion, and the must be actual suspicion (subjective) and reasonable grounds for suspecting (objective). This test is satisfied as PCSmith could believe that Sergio has committed theft, and he ~~could~~ ~~has~~ reasonable grounds for suspecting he would lie in the

amount of money in Sergio's wallet and Paula's reported loss of money. PC Smith has adhered to PACE letting to Code G arrest this far, yet the breach occurs in S28. S28 states that the reasons for arrest must be known at the time or as soon as reasonably practicable. This has not been followed. Even further, arresting officer (PC Smith) has to record: the nature and circumstances leading up to the arrest (S28), the reason why it was considered necessary (S28), must confirm that a caution was given (Code C) and anything said by the suspect. This entirely has not been followed at all, as Sergio was completely unaware of the arrest as PC Smith did not confirm a caution was given under Code C or follow the required procedure. This, in turn, would render the whole process of Sergio's arrest as unlawful, and not necessary (as Sergio willingly went to the police station, similarly in the case of Richardson where the 'necessary' test was considered).

Regarding the detention and questioning aspects of PACE, S30 (brought before a custody officer for booking in procedure), S36 (the custody officer having a duty to release the suspect if there is an absence of grounds to detain him), and S58 (the right to a solicitor) have all been breached. A custody officer was not present, as Sergio was taken directly to an interview room, and thus could not release him if it was considered that there was no reason for detaining. The right to a solicitor was not mentioned, thus conclusively Sergio was not told about this right, which by extension rules that the right to consult the codes of practice and the right to silence were not told to Sergio. The right to inform someone of his/her detention under S56 was followed correctly ~~there~~, Sergio was not given this ^{not} right thus incurring another breach of PACE. Regarding the time limits for detention, under S41 there is an initial time limit of 24

hours. S42 allows for a period of 24-36 hours, provided an indictable offence has occurred and a senior officer's ~~consent~~ confirmation is given. Sergio was kept for 39 hours in total, breaching S41 and S42 of PACE (no confirmation by a senior police officer). Even further, S40 states that a custody officer will check the validity of the detainment of the suspect firstly after 6 hours, then at 9 hourly intervals (at 15 hours, then 24, then 33). If at any point there is no grounds to detain, a custody officer has a duty to release the suspect. As a custody officer failed to check on Sergio 4 times (at 6 hours mark, 15, 24, and 33 hour mark out of his 39 hour detention), S40 of PACE has been breached. ~~As~~ With inspection of the police taking finger prints, S67 of PACE gives the guidelines of this.

The legality of the police as a whole is highly faulted and unlawful throughout. In relation to the stop and search of Sergio, S2 and 3 of PACE was breached, resulting in the absence of a lawful stop and search. With the arrest of Sergio, the procedure under S28 was not followed, and the necessity (under S24(5)) ~~was~~ is questionable (Sergio went willingly without resisting), meaning the arrest procedure was not followed, resulting in an unlawful arrest. Finally with thought on the detention, treatment and questioning by the police of Sergio, an ~~an~~ abundance of breaches of PACE occurred. S30 (brought to a custody officer), S36 (the procedure in procedure), ~~S44~~ S56 (right to inform someone of his/her detention), S58 (the right to a solicitor), S46 (24 hours initial time period of detainment), S42 (24-36 hours) ^{and} S40 (custody officer's review on detainment) ~~was~~ were all breached by PC Smith and the process which took part in the police station.

As the actions of the police towards Sergio were not lawful and was riddled with numerous breaches of PACE



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1984, Sergio could complain to the Independent Police
Commission (IPC) which scrutinises police, handles complaints
and gives punishment and/or fine. A remedy could be the dismissal
of PC Smith or an apology / compensation.

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