

## Sample Problem Question and Essay Question

### Problem Question

Gloria, Wood's eccentric aunt, aged 57, was invited to stay with Wood and his girlfriend Mary at their property on the coast. It was agreed that Gloria would stay for three weeks and would occupy 'the lodge' in the garden of the Wood's house some 30 yards away. Gloria also agreed to pay £40 to cover the electricity she would use in the lodge.

**Comment [MA1]:** Liability for omissions – the duty of care

Everything went well for two weeks, with all three sharing meals at the house. However, a change of mood then came over Gloria who decided that she no longer wanted to have meals with Wood and Mary. Gloria spent more and more time by herself at the lodge.

After 20 days of the holiday Gloria, whose physical condition had visibly deteriorated, announced that she refused to leave the lodge and was going to stay there the rest of the winter. This so enraged Wood and Mary that the next day they told her to leave immediately, which she did.

Six hours later, at 11 pm, Gloria rang their bell pleading to be let in as she was cold and hungry and had nowhere else to go. Wood and Mary refused, and during that night Gloria was taken to hospital suffering from hypothermia.

**Comment [MA2]:** Do they have a duty of care?

While in hospital, Gloria fell unconscious and was placed on a life support machine. After five days she was correctly diagnosed by Dr Spock as being in a persistent vegetative state with no hope of recovery. He accordingly disconnected the machine.

**Comment [MA3]:** There are two factors here. Is the doctor guilty of anything? Secondly, did his decision break the chain of causation?

Discuss the criminal liability of Wood, Mary and Dr Spock.

### **Essay Question**

In an essay question you need to make sure you address the question set directly, and make an attempt to critically analyse the issues.

*Case law on consent to offences against the person, even after the decision in Brown, is unjustifiably inconsistent. The irreconcilability of Emmett and Aitkin demonstrates this amply.'*

*Discuss.*

- Defence of consent to violent crimes with specific reference to the issue of consistency regarding the public interest. **Aitkin** and **Emmett** reveal an apparent incongruity by extending the public interest exception to 'rough and undisciplined horseplay' whilst excluding it from private consensual sexual behaviour despite the similarity of harm in each case.
- Allegation that the law lacks a clear moral foundation (Smith & Hogan, p. 603, 12<sup>th</sup> ed.)
- Describe the law on the availability on consent.
- Limitations on the availability of the defence on public policy grounds.
- Lack of consistency in decisions – **Jones** and **Emmett** extend it to horseplay but exclude it from private sexual activity.
- Guidelines in cases inconsistent (**Aitken**)
- The decision in **Brown/Jones/Emmett** – justifiable distinctions?
- Conclusion