

TASK 1: QUESTION 2

HOMICIDE PROBLEM QUESTION

INSTRUCTIONS

Set out below is a hypothetical scenario which raises a number of issues relating to the criminal responsibility of one individual. Your task is to identify the relevant law and assess the relevant issues that may affect the criminal liability in the scenario.

You are required to only deal with issues arising from the topics of criminal responsibility and homicide (Weeks 1-2, 4-5). You should have regard to the relevant readings and activities from those classes. A complete answer may require independent reading of relevant legislation, cases and material. You should NOT consider any issues of complete defences.

You will need to apply relevant legislation and case law to provide support for each legal argument put forth in your answer. You should have due regard for the modern approach to statutory interpretation in answering the question.

If unsure how to structure your answer, you should refer to the scaffolds that have been used in tutorials for answering problem questions. It is strongly recommended that you make use of appropriate sub-headings.

Your answer must be no longer than 1500 words. Your word count should be included at the bottom of your assignment. The word limits excludes citations contained in footnotes. Formatting, and other policies applied to all assessments in this unit are contained in the Unit Guide.

Due Date: Friday 7th April, 11.59 pm

Problem Scenario

Dr Julius Hibbert is a licensed medical practitioner working in Sydney. While a successful doctor, he has recently been divorced by his wife because of his gambling addiction. He has been suffering depression, in part due to the divorce and the loss of custody of his children, and also due to some financial difficulties he is experiencing due to the divorce settlement and his gambling debts.

He is approached by a family of wealthy Ethiopian immigrants, the Kasims, for whom he has been acting as the family doctor for the past year. The Kasims are Falasha (a small sect of Judaism). They approach Dr Hibbert with the request to circumcise their 2 teenage daughters, a practice they consider necessary for preparing their daughters for marriage. Dr Hibbert immediately refuses, knowing that this practice is also known as female genital mutilation (FGM) and is expressly prohibited in NSW. The Kasims explain that they must perform this ritual, and that if he refuses they will have to conduct the practice themselves, without any medical assistance. They also offer Dr Hibbert \$200 000 to perform the procedure. Dr Hibbert reluctantly agrees.

Dr Hibbert has, of course, never conducted this procedure before, which involves the excision of the clitoris and the sealing of the labia minora with stitches. He spends a day watching medical videos demonstrating the procedure. Because he is aware he is committing a criminal offence, he decides to perform the procedure at the Kasim's house, rather than at his surgery. He performs the procedure on the two daughters. To Dr Hibbert's relief, the first 'circumcision' he performs goes off without a hitch. During the second procedure however, the daughter (Kaila) being operated on starts to bleed profusely. Dr Hibbert quickly explains to the Kasims that this isn't unusual and that he brought a haemostatic agent, Orgaran, with him to assist in stopping the bleeding. However, Mrs Kasim, a pharmacist, stops Dr Hibbert from administering the agent, as she knows that it is derived from pigs, and it is prohibited by their faith to use porcine products. Instead, an ambulance is called, and Kaila taken to a nearby hospital. She is placed into an induced coma and given a blood transfusion, but the doctors at the hospital caution that the bleeding may have been stopped too late. Three weeks later, Kaila cannot be brought out of the coma, and after being told that there is no hope of recovery, the Kasims agree that Kaila's life support be turned off.

Dr Hibbert is charged with murder, with the alternative charge of manslaughter available. Assess Dr Julius Hibbert's liability in this case, restricting your attention to any possible issues relating to homicide, not any other offences. Remember to discuss each element of the relevant offences, including considerations of voluntariness, causation and temporal coincidence.