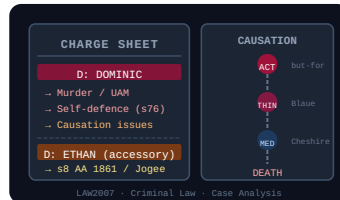


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🎓 UK LEVEL 5 — YEAR 2 UNDERGRADUATE | OSCOLA



Criminal Liability in a Fatal Assault: Murder, Causation, Self-Defence, and Secondary Party Liability

A Problem Question Analysis — Advising as to the Criminal Liability of Dominic and Ethan

MODULE CODE	LAW2007
MODULE TITLE	Criminal Law
ACADEMIC LEVEL	UK Level 5 (Year 2 Undergraduate)
TARGET GRADE	Distinction — 70%+
WORD COUNT	Approximately 1,800 words (excl. footnotes & bibliography)
KEY ISSUES	Murder · UAM · Causation (Thin Skull · Novus Actus) · Self-Defence · Secondary Liability
CASES CITED	23 Cases (Jogee, Blaue, Cheshire, Woollin, Church, Palmer, and others)
REFERENCING STYLE	OSCOLA (Oxford Standard for the Citation of Legal Authorities)

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Approx. 1,800 words | Distinction Level | UK Level 5 | OSCOLA | 23 Cases

// PROBLEM QUESTION – FICTITIOUS SCENARIO

Dominic, who has consumed several alcoholic drinks, confronts Marcus outside a nightclub after learning that Marcus has been messaging his girlfriend. Marcus makes a dismissive gesture. Dominic punches Marcus twice in the face, causing Marcus to fall and strike his head heavily on the concrete pavement. Marcus, unbeknown to Dominic, suffers from a rare bleeding disorder which causes abnormal internal bleeding from the head injury. Paramedics attend the scene but, owing to a failure to identify the underlying condition, administer anticoagulant medication that significantly exacerbates the bleeding. Marcus dies four hours later. Medical evidence establishes that had the correct treatment been administered, Marcus would have had an 80% chance of survival.

Before the confrontation, Ethan (Dominic's friend) drove Dominic to the nightclub, knowing that Dominic was furious and intended to "sort out" Marcus. At the moment Dominic threw the first punch, Ethan called out: "Go on — he deserves it." Dominic claims that Marcus had made a threatening gesture towards him immediately before the first punch was thrown.

Advise as to the criminal liability of Dominic and Ethan.

Table 1: Summary of Criminal Issues Arising (Fictitious scenario)

Defendant	Potential Offence	Key Issue	Likely Outcome
Dominic	Murder	Oblique intent (GBH); causation	Arguable — jury question on MR
Dominic	Unlawful Act Manslaughter	Dangerous unlawful act; Church test	Highly likely to be established
Dominic	Self-defence (s76 CJA 2008)	Was force necessary and proportionate?	Likely to fail — excessive/pre-emptive

Defendant	Potential Offence	Key Issue	Likely Outcome
Ethan	Secondary liability (s8 AA 1861)	Intentional encouragement — Jogee test	Arguable — intent to encourage evident

1. INTRODUCTION

This analysis advises on the criminal liability of Dominic and Ethan arising from the fatal assault of Marcus. The facts raise several interconnected issues of English criminal law: whether Dominic satisfies the elements of murder or the lesser charge of unlawful act manslaughter; the legal treatment of the medical intervention that contributed to Marcus's death, and of Marcus's pre-existing vulnerability; whether Dominic's claim of self-defence can succeed; and whether Ethan incurs secondary party liability under section 8 of the Accessories and Abettors Act 1861, as interpreted by the Supreme Court in *R v Jogee*.¹ The prosecution bears the burden of proving guilt beyond reasonable doubt throughout.²

2. DOMINIC'S CRIMINAL LIABILITY

2.1 Murder: Actus Reus and Mens Rea

Murder is defined at common law as the unlawful killing of a human being under the King's Peace with malice aforethought, expressed or implied.³ The *actus reus* — an unlawful act causing the death of a person — is plainly satisfied: Dominic's punches constitute an unlawful application of force, and Marcus has died. The central question is whether Dominic possessed

the requisite *mens rea*: an intention to kill or to cause grievous bodily harm (GBH).⁴

On the facts, Dominic's primary purpose was to "sort out" Marcus — punching him twice to the face. It is difficult to establish a direct intention to kill from this act alone; however, an intent to cause GBH would suffice, and repeated punches to the head and face may evidence such intent. Where the defendant's purpose is not to kill or cause GBH, the question of *oblique intent* arises: the House of Lords in *R v Woollin* held that a jury may find intention only where death or serious injury was a virtual certainty (barring some unforeseen intervention) as a result of the defendant's actions, and the defendant appreciated that this was the case.⁵ The *Woollin* direction provides the jury with a permissive inference — they are not *required* to find intention merely because the consequence was virtually certain — but in the present case it is unlikely that two punches, however forceful, would be regarded by a jury as virtually certain to cause GBH to a person of ordinary robustness. The prosecution's strongest argument on *mens rea* is therefore direct GBH intent rather than oblique intent.

1. *R v Jogee* [2016] UKSC 8.

2. *Woolmington v DPP* [1935] AC 462 (HL) 481 (Lord Sankey LC).

3. **Sir Edward Coke**, *Third Institute* (1644) 47; *R v Vickers* [1957] 2 QB 664 (CA).

4. *R v Vickers* [1957] 2 QB 664 (CA); confirmed in *R v Cunningham* [1982] AC 566 (HL).

5. *R v Woollin* [1999] 1 AC 82 (HL) 96 (Lord Steyn); *R v Nedrick* [1986] 1 WLR 1025 (CA).

2.2 Causation: But For, Thin Skull Rule, and Medical Intervention

Even if murder *mens rea* is established, causation must be proved. English law divides this into factual causation and legal causation. On the facts, factual causation is straightforward: applying the *but for* test from *R v White*,⁶ but for Dominic's punches, Marcus would not have suffered the head injury that ultimately caused his death. However, two complicating factors require careful analysis: Marcus's underlying bleeding disorder (the thin skull point), and the paramedics' negligent treatment (the novus actus point).

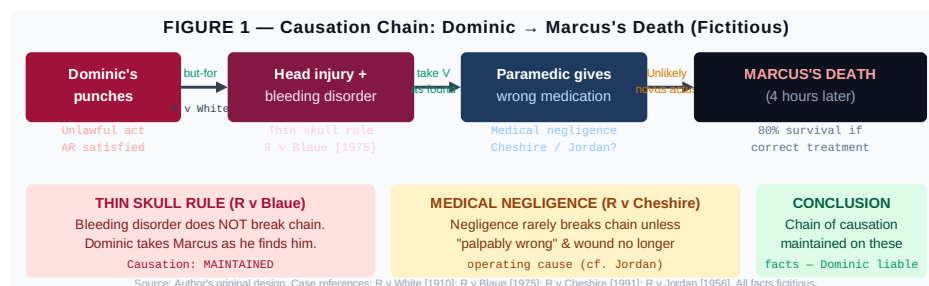


Figure 1: Causation chain from Dominic's assault through Marcus's bleeding disorder and the paramedics' negligent treatment to death. The thin skull rule (*R v Blaue*) prevents the bleeding disorder from breaking the chain; *R v Cheshire* prevents the medical negligence from doing so on these facts. Source: Author's original design.

The thin skull rule. Marcus's bleeding disorder is an underlying physical vulnerability of which Dominic was wholly unaware. The principle in *R v Blaue*⁷ — that a defendant must take the victim as they find them — is directly applicable. In *Blaue*, the defendant's act remained the operating cause of death

notwithstanding the victim's refusal of a blood transfusion, because that refusal arose from a characteristic of the victim (religious belief) with which the defendant had to contend. By exact analogy, Marcus's bleeding disorder is a characteristic of Marcus as Dominic found him; it does not sever the causal chain between the punches and the death, but merely explains why a blow that might have been non-fatal to a person without the condition proved fatal here.

Medical intervention as novus actus. The more complex question is whether the paramedics' negligent administration of anticoagulant medication operates as a *novus actus interveniens* — a new intervening act sufficiently independent and potent to break the causal chain. The leading authority is *R v Cheshire*,⁸ where the Court of Appeal held that the defendant's acts need not be the sole or even the main cause of death; it is only where the negligence of doctors was so independent of the defendant's acts and so potent in causing death that the jury could properly find the defendant's contribution no longer significant that the chain would be broken. In *Cheshire*, grossly negligent medical care did not break the chain. The exceptional case of *R v Jordan*⁹ — where the chain was broken because the original wound had largely healed and the death was caused by treatment described as "palpably wrong" — is distinguishable: in the present case, Marcus's head injury remained the active cause of the catastrophic

bleeding at the time of death; the anticoagulant medication exacerbated an ongoing haemorrhage rather than creating an entirely independent pathological process. The 80% survival probability without the negligence does not alter this analysis, as causation in criminal law does not require that the defendant's act be a sine qua non of the precise manner of death — only that it be a significant contributing cause.¹⁰ On balance, under *Cheshire*, the medical negligence is unlikely to break the causal chain, and Dominic will be held to have caused Marcus's death.

1. *R v White* [1910] 2 KB 124 (CA).

2. *R v Blaue* [1975] 1 WLR 1411 (CA) 1415 (Lawton LJ).

3. *R v Cheshire* [1991] 3 All ER 670 (CA) 677 (Beldam LJ).

4. *R v Jordan* (1956) 40 Cr App R 152 (CA).

5. *R v Smith* [1959] 2 QB 35 (CMAC) 42 (Lord Parker CJ).

2.3 Self-Defence under s76 Criminal Justice and Immigration Act 2008

Dominic's claim that Marcus made a threatening gesture immediately before the first punch raises the defence of self-defence, now codified in section 76 of the Criminal Justice and Immigration Act 2008 alongside the common law principles preserved therein.¹¹ The test is two-limbed: (i) did the defendant honestly believe that force was necessary in the circumstances as he perceived them, and (ii) was the force used objectively reasonable in those circumstances?¹² On the first limb, a mistaken belief in the need for defensive force will found the defence provided the belief was genuine, though not necessarily reasonable — the reasonableness of the belief is merely evidence from which the jury may assess its honesty.¹³ On the second limb, the jury is instructed to take account of the fact that a person acting in the heat of the moment cannot be expected to weigh the precise degree of force required;¹⁴ however, where the force used was plainly disproportionate, the defence will fail and cannot reduce murder to manslaughter.¹⁵

On the present facts, there are significant obstacles to Dominic's claim. First, the "threatening gesture" he alleges is vague and, on the evidence, ambiguous — a

dismissive gesture does not obviously constitute an imminent threat necessitating physical force. A jury may be sceptical that Dominic genuinely believed defensive force was necessary, particularly given that he had gone to the nightclub angered and that Ethan's encouragement suggests the violence was premeditated rather than reactive. Second, even accepting a genuine belief in the need for force, two punches to the head — one of which caused the fatal fall — are likely to be regarded as disproportionate to a non-physical threatening gesture, especially in light of the failure of Dominic's claim to have been under immediate threat. The defence is therefore likely to fail. Critically, as confirmed in *R v Clegg*,¹⁶ excessive force in self-defence does not reduce murder to manslaughter; it simply defeats the defence entirely. Voluntary intoxication, which may have been present here, cannot be used to support a mistaken belief in the need for defensive force if the mistake was caused by the intoxication itself.¹⁷

2.4 Unlawful Act Manslaughter: A Fallback Charge

If the jury is not satisfied that Dominic possessed the *mens rea* for murder — perhaps concluding that he intended to assault Marcus but not to cause him GBH — the prosecution will rely on unlawful act manslaughter (constructive manslaughter). The *actus reus* requires the commission of an unlawful act that is both dangerous and causes death. The *mens rea* requires only intention to do the unlawful act; there is

no requirement that the defendant foresaw the risk of harm or death.¹⁸

The act must be unlawful — not merely tortious — and in the present case the punches constitute battery, a common law criminal offence. The test of dangerousness, established in *R v Church*,¹⁹ requires that the act must be such that all sober and reasonable people would inevitably recognise it carried some risk of harm to the person. This is an objective test: it is assessed by reference to the characteristics of the victim as they were apparent (or ought to have been apparent) to the defendant at the time of the act, not by reference to the defendant's actual knowledge. The refinement in *R v Dawson*²⁰ confirmed that the relevant question is whether a sober and reasonable bystander would have recognised the risk; unknown vulnerabilities need not be taken into account for the dangerousness test (though they are relevant to causation through the thin skull rule). On the present facts, punching a person in the head twice and causing them to fall onto concrete pavement plainly satisfies the *Church* dangerousness test, and unlawful act manslaughter is very likely to be established.

1. *Criminal Justice and Immigration Act 2008*, s 76.

2. *ibid* s 76(3)–(4); *R v Palmer* [1971] AC 814 (PC) 832 (Lord Morris).

3. *Criminal Justice and Immigration Act 2008*, s 76(4); *R v Williams* (1984) 78 Cr App R 276 (CA).

4. *Criminal Justice and Immigration Act 2008*, s 76(7).

5. *R v Clegg* [1995] 1 AC 482 (HL).

6. *ibid* 497–498 (Lord Lloyd).

7. *R v Hatton* [2005] EWCA Crim 2951, [2006] 1 Cr App R 16.

8. *R v Church* [1966] 1 QB 59 (CA) 70 (Edmund Davies J).

9. *ibid.*

10. *R v Dawson (1985) 81 Cr App R 150 (CA).*

3. ETHAN'S CRIMINAL LIABILITY: SECONDARY PARTY

3.1 The Law After *R v Jogee*

Secondary party liability in English criminal law is governed by section 8 of the Accessories and Abettors Act 1861, which provides that a person who aids, abets, counsels or procures the commission of an offence is liable to be tried as if they were the principal offender. The Supreme Court's landmark judgment in *R v Jogee*²¹ fundamentally reformed the *mens rea* threshold for accessory liability, overruling over three decades of authority derived from *Chan Wing-Siu v R*.²² Under the pre-*Jogee* law, a secondary party could be convicted of a principal's offence if they merely foresaw it as a possible consequence of their joint enterprise — a much lower threshold than that applicable to principals. The Supreme Court in *Jogee* held this to be a wrong deviation from the established law: foresight of a possible offence is merely evidence of intention to assist or encourage, not a substitute for it. After *Jogee*, the prosecution must prove that the secondary party (i) assisted or encouraged the act of the principal; and (ii) did so with the intention of assisting or encouraging it, with knowledge of the essential matters that constitute the offence.²³ The

result is a closer alignment between the *mens rea* of principals and accessories.

3.2 Applying Jogee to Ethan

Ethan's liability turns on two questions: whether his conduct constituted assistance or encouragement, and whether he acted with the requisite *mens rea*.

On the first question, Ethan's conduct provides at least two potential bases for secondary liability. His act of driving Dominic to the nightclub knowing that Dominic intended to confront Marcus may constitute *assistance* within the meaning of section 8. Presence at the scene is not, of itself, sufficient to establish secondary liability; however, presence combined with prior encouragement or positive facilitation may be.²⁴ In *Attorney-General's Reference (No 1 of 1975)*,²⁵ the Court of Appeal confirmed that "aids" is to be given a wide meaning encompassing any act that renders assistance to the principal. Driving Dominic to the scene, knowing his purpose, renders practical assistance to the commission of the assault. More significantly, Ethan's exclamation — "Go on — he deserves it" — at the moment the first punch was thrown constitutes encouragement within the natural meaning of the statute. Shouted encouragement at the moment of an assault is precisely the kind of conduct that emboldened the principal and contributed to the commission of the offence: as confirmed in *R v Stringer*,²⁶ encouragement need not be specifically solicited by the principal and need not be the but-for

cause of the principal's act to suffice for secondary liability.

On the second question — *mens rea* after *Jogee* — the prosecution must prove that Ethan intended to assist or encourage Dominic to assault Marcus, with knowledge that Dominic was about to commit or was committing an assault. This is well-evidenced: Ethan knew Dominic was furious and intended to confront Marcus, drove him to the scene, and shouted encouragement at the moment of the assault. It would be difficult for Ethan to argue that he did not intend his shout to encourage the assault — the natural inference from his conduct is precisely that intention. The question that may arise is whether Ethan intended to assist/encourage a mere assault (battery) or the more serious GBH/murder that resulted. After *Jogee*, the prosecution must prove intention as to the type of offence committed by the principal. If Ethan is charged as a secondary party to murder, the Crown must prove he intended to assist or encourage an act that he knew to be murder or intended GBH. This is harder to establish than for unlawful act manslaughter, where only intention to assist the unlawful act (the battery) is required, not foresight of death.²⁷ On balance, Ethan is most likely to be convicted as a secondary party to unlawful act manslaughter, and potentially to battery.

4. CONCLUSION

In conclusion, Dominic is most likely to be convicted of unlawful act manslaughter: the *Church* dangerousness test is clearly satisfied, and causation — including both the thin skull rule and the medical negligence — is unlikely to defeat the charge. The murder charge is arguable if the jury is persuaded of GBH intent, but the prosecution faces difficulty on *mens rea*. Self-defence is very unlikely to succeed on these facts. Ethan faces secondary party liability under section 8 of the 1861 Act on the basis of both facilitation (the drive to the scene) and encouragement (the shouted words): after *Jogee*, the evidence of intentional encouragement is strong. His most likely charge, however, is secondary manslaughter rather than secondary murder, given the difficulty of proving he shared or intended to assist Dominic's intent to cause GBH.

1. *R v Jogee* [2016] UKSC 8, [2017] AC 387.

2. *Chan Wing-Siu v R* [1985] AC 168 (PC).

3. *R v Jogee* [2016] UKSC 8 [87] (Lords Neuberger and Hughes).

4. *R v Bryce* [2004] EWCA Crim 1231; *R v Clarkson* [1971] 1 WLR 1402 (CMAC).

5. *Attorney-General's Reference (No 1 of 1975)* [1975] QB 773 (CA) 779 (Lord Widgery CJ).

6. *R v Stringer* [2011] EWCA Crim 1396, [2012] QB 160.

7. *R v Jogee* [2016] UKSC 8 [90]; **David Ormerod and Karl Laird**, *Smith, Hogan and Ormerod's Criminal Law* (16th edn, OUP 2021) 208.

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