

Notice: The "A" answer is one to which most professors would very likely give a grade of "A." The grades assigned to the non-A answers indicate our opinion of their relative merit; however, given the great variation in grading practices, professors will almost certainly not universally agree on what grades they would give the answers. What is important is not the grade, but why the answers fall progressively short of the "A" answer.

Ringo's Criminal Liability for John's Death (Omissions Liability)
["B" Answer]

ISSUE #1: ACTUS REUS

COMMON LAW

Issue: Whether Ringo had a duty to aid John because he created the risk that caused John's death.

Rule: Liability for an omission arises when there exists an affirmative duty to aid. One such duty arises when the defendant created the risk that caused the death.

Application: Ringo created the risk by causing the explosion that injured John. Rather than stopping to aid John or calling for assistance, Ringo continued to flee and therefore failed to fulfill his duty to aid John. This satisfies the actus reus for omissions liability.

Conclusion: Ringo did have a duty to aid John and failed to satisfy that duty.

MODEL PENAL CODE

Same issue, rule, and analysis as under common law.

ISSUE #2: MENS REA

COMMON LAW

Issue: Whether Ringo is liable for criminal homicide (on these facts, either murder or involuntary manslaughter) for his failure to aid John.

Rule: Ringo's guilt will turn on whether he had the mens rea for murder (malice aforethought, which includes extreme recklessness) or the mens rea for involuntary manslaughter (ordinary recklessness or criminal negligence).

Application: Ringo was aware that John was "seriously injured but still breathing." John would have survived if Ringo had called for medical assistance. To be murder, Ringo's omission must have been accompanied by malice aforethought. On these facts, that means Ringo must have caused John's death either intentionally or with extreme recklessness. Because of his awareness of John's injury, he was at least reckless. The only remaining question is whether his recklessness was extreme, justifying a murder conviction, or ordinary, justifying only an involuntary manslaughter conviction. This is a close call, and a jury could go either way. I believe it was extreme recklessness, however, because Ringo could have arranged for medical assistance very easily and with no risk to himself.

Conclusion: Ringo is guilty of murder for failing to aid John.

MODEL PENAL CODE

The analysis under the Model Penal Code is very similar, except that ordinary recklessness would result in a conviction for manslaughter rather than involuntary manslaughter – the M.P.C. does not distinguish between voluntary and involuntary manslaughter.

Notice: The "A" answer is one to which most professors would very likely give a grade of "A." The grades assigned to the non-A answers indicate our opinion of their relative merit; however, given the great variation in grading practices, professors will almost certainly not universally agree on what grades they would give the answers. What is important is not the grade, but why the answers fall progressively short of the "A" answer.

Analysis of "B" Answer

This student's answer is correct – it doesn't miss any of the important issues or misapply the relevant rules – but the answer is less complete than the "A" answer and does not show the same depth of understanding.

On the *actus reus* issue, the student correctly states the rule about affirmative duties and correctly identified the duty at issue here, but he neglects to mention that the general rule is that there is *no* duty for an omission. This isn't all that important, but the student missed an easy chance to show the professor that he understood the general principles in this area of criminal law and that we deal here with a set of exceptions to those principles.

In the application discussion, the student's discussion is correct, but again he missed a chance to demonstrate his knowledge of a somewhat subtle point – namely, that it doesn't matter for purposes of the *actus reus* discussion whether Ringo was culpable in creating the risk, only that he did not in fact come to John's aid.

On the *mens rea* issue, the student omits – in both the rule statement and the application discussion – the important point that, with an omission, the defendant is guilty of the same crime he would have committed if he'd caused the same result by means of an affirmative act. Although the remainder of the answer suggests the student knew how to analyze the issue, it's better to be explicit.

The answer also omits an important part of the factual analysis – that we don't have direct evidence that Ringo was aware of the risk John would die, but that we can probably infer this from the fact we are given.