



CRIMINAL LAW: SPECIFIC OFFENCES

- EXAM PERIOD SS 2021 -

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Section A: Multiple-Choice & Short Open Questions

(4.5 out of 20 points | 1.5 points per question)

*Justify all your answers with up to **three** sentences. Mere reference to the respective legal provisions is not considered a fully justified answer.*

1. Participation to clinical trials is relevant for criminal law, only if the participants' life or physical integrity is damaged or put at risk.

- a. True
- b. False

2. Provide **two** examples that indicate the relevance of the brain death criterion, which is applied in the context of the post-mortem transplantations, for the assessment of the criminal liability of the involved staff.

3. Withdrawing a previously initiated treatment is to be classified as:

- a. active direct euthanasia
- b. active indirect euthanasia
- c. passive euthanasia

Section B: Exercise (15,5 out of 20 points)

Maíra and Jorge were living together for five years, when they decided to become parents. After several unsuccessful attempts and having been subjected to various medical exams, they found out that Jorge was suffering from a deficiency in the semen which leads to partial male infertility. Their only hope was that Maíra would be subjected to IVF using their own genetical material. For this purpose, they visited a private clinic, where they were treated by Dr. Perreira, who successfully transferred an embryo to Maíra's uterus. Her pregnancy began and was evolving smoothly.

At the end of the fifth month of her pregnancy, Maíra, suddenly, suffered a severe vaginal bleeding. She was transferred without any delay to the closest public hospital, where she was treated by Dr. Lopes an experienced gynaecologist. The latter -after realising that it was not medically possible to save the embryo- decided to terminate the pregnancy by completely removing Maíra's uterus because he also suspected a case of cancer. Maíra survived the medical operation, but later -consulting other specialists- she found out that Dr. Lopes could have chosen a milder way to terminate her pregnancy, namely by inducing the labour and removing the foetus (which, as proved, has already been dead, when she was transferred to the hospital). And in any case, she has never been diagnosed with uterus cancer.

A couple of months later, Maíra and Jorge decided that they still wanted to have a child together, and, having no other alternative, they started discussing the possibility of surrogacy. Without informing Maíra, Jorge, who was a successful businessman, asked one of his employees, Margarida, to be the surrogate mother. He knew that Margarida had serious financial problems, and asked her to befriend Maíra and offer to take on the role of the surrogate mother, without letting her know the professional relationship she had with him. In exchange, Jorge offered to financially support Margarida for a life and promised her that she would never get fired.

Margarida accepted Jorge's offer, and after four months, the three of them visited the aforementioned clinic. Dr. Perreira fertilised that time ova coming from Margarida with Jorge's semen and transferred the embryo to Margarida's uterus. Dr. Perreira was aware of the fact that Margarida and Jorge had reached a financial agreement. At the same time, the intended parents knew that Margarida's ova would be used and accepted this possibility.

At the end of the first month of this pregnancy, Maíra found out what happened, broke up with Jorge and intended to raise up the child, who would be born, on her own. Margarida, being afraid of Jorge's reaction, deliberately decided to abort the child.

Assess the events in the light of the Portuguese criminal law.

Good luck! / Boa sorte!