

Answers to Exam questions

Chapter 6

Question 1

At a showbiz party, John and Carol, two famous actors, ask Richard to supply them with some heroin. Richard prepares two syringes of heroin which he hands to John and Carol. John injects himself with one syringe. Carol asks Richard to hold a tourniquet around her arm while she injects herself with the other syringe. Unfortunately, the dose of heroin which Richard has prepared proves too strong for John and Carol, and they both die from a drug overdose.

Afraid of getting into trouble, Richard attempts to leave the party. He goes to the cloakroom in order to retrieve his expensive designer jacket. However, he is unable to find his cloakroom ticket. Jacqui, the cloakroom attendant and a senior citizen, refuses to give Richard his jacket unless he produces his ticket. Richard becomes very angry and shouts at Jacqui whilst punching the desk. Jacqui, who suffers from a serious heart condition, has a heart attack and dies.

Discuss Richard's liability for the deaths of John, Carol, and Jacqui.

Bullets

- This question requires consideration of the liability of Richard for three deaths. Take each death in turn. At no point does Richard intend to kill or cause GBH to John, Carol or Jacqui, so he will not be guilty of murder. However, he may be guilty of involuntary manslaughter, specifically unlawful act manslaughter.
- Set out the four key elements of unlawful act manslaughter from *Larkin* (1948) and *DPP v Newbury and Jones* (1977).
- The prosecution must prove that:
 - the act was intentional
 - it was unlawful
 - it was objectively dangerous
 - it caused death

Richard's liability for John's death

- Richard's act here is preparing a syringe and handing it to John. This is clearly an intentional act. However, problems arise when trying to identify an unlawful act which caused death. The act must be unlawful and this means that it must amount to a criminal offence: see *Franklin* (1883) and *Lamb* (1967).
- Richard commits two criminal offences here – he is in possession of a controlled drug and he supplies that drug to another, both offences under the Misuse of Drugs Act 1971.
- The law has recently been clarified by the House of Lords in *Kennedy (No. 2)* (2007). Consider the decision in this case. Although factual causation is easily established (*White* (1910)), John's self-injection will break the chain of causation provided it was a free, voluntary, and informed act by an adult. Thus, Richard may be absolved of liability for John's death due to the voluntary act of self-injection by John.

Richard's liability for Carol's death

- Richard's act here is holding the tourniquet around Carol's arm while she self-injects. Once again, holding the tourniquet is clearly an intentional act. These facts are similar to those in the case of *Rogers* (2003), in which the Court of Appeal held that the defendant could be liable for the death of the victim because he had played a part in the mechanics of the injection by holding the tourniquet.
- However, this case was overruled by the House of Lords' decision in *Kennedy (No. 2)*. Thus, in this case, it is likely that Carol's act of self-injection will also break the chain of causation if it is the free and fully informed act of an adult.

Richard's liability for Jacqui's death

- Richard's act in respect of Jacqui is shouting at her and thumping the desk. This is certainly intentional.
- It could also be an unlawful act if Richard's conduct is deemed to amount to an assault. Apply the definition of an assault from *Fagan v MPC* (1969) – the *actus reus* will be present if Richard causes Jacqui to apprehend immediate unlawful personal violence. The *mens rea* will be present if he does so intentionally or subjectively recklessly. Shouting combined with the violent act of striking the desk may very well satisfy the *actus reus* – Jacqui is clearly shocked and may apprehend immediate unlawful personal violence. If Richard intends to cause her such apprehension or

foresees the risk of doing so and acts anyway, the requisite elements of an assault are satisfied. Both the AR and MR must be present: *Lamb*.

- The act must also be dangerous. The test is objectively assessed as stated in *Church* (1966): it must be proved that all sober and reasonable people would recognise the risk of some harm, albeit not serious harm. This test was approved in *DPP v Newbury and Jones* (1977).
- The defendant is deemed to have the knowledge that the defendant had or should have had at the time of the offence: *Dawson* (1985). Explain that the facts here are similar to those in *Dawson*. In that case the Court of Appeal held that the defendants could not be convicted of unlawful act manslaughter because the victim's heart condition would not have been obvious to the reasonable man present at the scene. The same would probably apply here, unless Jacqui was a particularly elderly and frail lady (see *Watson* (1989)).
- Thus, on the facts, even if the act caused death, it was not objectively dangerous and thus Richard is unlikely to be convicted of manslaughter here.

Question 2

To what extent is the law relating to gross negligence manslaughter uncertain and circular? Refer to case law in your answer.

Bullets

- This question requires consideration of the test for gross negligence. Explain that gross negligence manslaughter is a form of involuntary manslaughter for which proof of the *mens rea* of murder is not required.
- Explain the elements of gross negligent manslaughter. According to the House of Lords' decision in *Rose*, the five requisite elements are:
 1. The defendant owed an existing duty of care to the victim
 2. The defendant negligently breached that duty of care
 3. It was reasonably foreseeable that the breach of that duty gave rise to a serious and obvious risk of death
 4. The breach of that duty caused the death of the victim
 5. The circumstances of the breach were truly exceptionally bad and so reprehensible as to justify the conclusion that it amounted to grossly negligence and required criminal sanction

- This question is concerned with the final element – whether the conduct of the defendant is grossly negligent. This is a question of fact for the jury to decide.
- Consider the meaning given to this element in *Bateman* (1925): the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime and conduct deserving of punishment.
- Test set out in *Adomako* by the HL: whether having regard to the risk of death involved the conduct of the defendant was so bad in all the circumstances as to amount to a criminal act or omission. In *R v Rose* [2017] EWCA Crim 1168, the Court of Appeal held that the prosecution must prove that the circumstances of the breach were truly exceptionally bad and so reprehensible as to justify the conclusion that it amounted to grossly negligence and required criminal sanction
- According to *AG's Ref (No. 2 of 1999)* (2000), the Court of Appeal held that evidence of the defendant's state of mind was not necessary for a conviction of gross negligence manslaughter.
- The tests for gross negligence require consideration of the risk of death involved. Discuss the circularity of the tests which require the jury to decide whether the defendant's act or omission is criminal. Should this be a question of law and not one for the jury? Does a defendant know when his conduct or omission may or may not be grossly negligent? Arguably the law is not accessible. Conclude by addressing the question about whether the test is uncertain and circular.