Model Exam (Criminal Law)

IRAC method of exam technique

Issues – Outline the issues that you are going to discuss
Rules – Define the legal rules that are relevant to the question
Application – Apply the legal rules to the facts of the question (this is the hard part!)
Conclusion – Usually in the form of an advice to your hypothetical client.

Always use your reading time wisely to PLAN YOUR ANSWER before writing. This is of upmost importance as it will help you clarify your thoughts and ensure that you avoid following exam strategies that students commonly resign themselves to:

   i) ‘the kitchen sink’ i.e spilling all of your knowledge that is vaguely related to the topic onto the exam paper and hope for the best.
   ii) ‘the garden path’ i.e going off on an irrelevant tangent

Remember that the APPLICATION IS THE MOST IMPORTANT SECTION of your answer and should take up the bulk of your time. The actual conclusions you reach are often superfluous. Rather your marker will be most interested in how you arrived at your conclusion.
CRIMINAL LAW EXAM

Here is a model answer for a Criminal Law problem. Criminal Law is a subject typically taught in the first or second year of a law degree. This exam answer is an excellent example of the IRAC method, an exam technique which is espoused by law lecturers around the country. Try to answer the question yourself first before looking at the answer. Don’t worry if you didn’t come up with the same amount of text as is in the answer below. The student who wrote this answer had a considerable amount of time in which to write. Good luck!

CRIMINAL LAW QUESTION

Alan, Chris and Jenny decide to visit an art museum in Placton. Alan has a low IQ which Chris taunts him about when they are in the museum. Alan becomes incensed and pushes Chris, who falls onto a priceless painting causing serious damage to it. A security guard, Ed, arrives at the scene and tells them that he is going to call the police. Jenny shouts at him ‘Back off, we haven’t done anything’ and pushes him. Ed loses his balance and falls over, hitting his head. His injuries are more severe than would normally be expected because he has an abnormally thin skull.

Alan, Chris and Jenny run out of the museum.

A doctor, Joe, is at the art museum to look at the paintings with his children. As it is his day off, he decides not to help Ed.

An ambulance arrives at the scene. Mike, one of the paramedics, notices that Ed is wearing a valuable watch and decides to take it for himself. When Ed, who is unconscious, arrives at hospital, Dr. Mud prescribes medication which Ed is allergic to and as a result, he dies.

Discuss the possible criminal liability of the parties.
CRIMINAL LAW ANSWER

INTRODUCTION

The most important element of addressing a Criminal Law problem question is WHO you are meant to be advising. Some questions may tell you to advise one party or several parties. Here, you are asked to 'Discuss the possible criminal liability of the parties' which means that you should discuss potential criminal liability for ANY of the parties in this set of facts. It does not matter if you read through the facts and decide that someone isn’t liable. It is important to show the examiner your thinking and why you decided X was liable and why you decided Y was not liable.

So, the next stage is to identify in your mind anyone who may be liable for a criminal offence. The parties who may potentially be liable for criminal offences are Alan, Chris, Jenny, Joe, Mike and Dr. Mud. The most logical way of structuring your question is discussing the criminal liability of each individual and then moving on to the next one. So, if you decide to write a plan in the exam, you might write the names of those who may have committed criminal offences and scribble down what offences you think they may have committed. You should consider the possible offences that the parties may have committed and whether there may be any defences available to those crimes. It is also important to decide where most of the liability will lie; some parties may have committed more crimes than others, in which case, you will be expected to write more about them.

APPLICATION

Alan

INTRODUCTION

Alan pushed Chris, potentially committing a battery and indirectly caused criminal damage by pushing Chris. As a result of this action, he may be found criminally liable for offences against the person and against property.

BATTERY

Alan pushed Chris, which amounted to an unlawful application of physical force. He therefore committed the actus reus of a battery under s(39) of the Criminal Justice Act 1988. It is clear from cases such as Collins v. Wilcock that a simple touch is enough to amount to a battery. Wilson v. Pringle indicates that touching must be hostile to constitute a battery, although there is dicta in Re: F which indicates that there may be circumstances where touch need not be hostile. On
the facts, it sounds as if Alan reacted angrily to Chris’s taunts about his low IQ which suggests that there was hostility when he pushed Chris. The mens rea of battery is that simply an intentional or reckless infliction of intentional force (R v. Venna). Under the circumstances, it looks as if Alan intended to commit a battery, but if not, subjective recklessness will suffice (R v. Spratt).

**CRIMINAL DAMAGE**

The doctrine of transferred malice is relevant here in respect of the damage caused to the painting. The actus reus of the offence was committed by Chris, but it is apparent from R v. Mitchell, that even if the defendant pushes someone who causes the harm, that the defendant will be liable under the doctrine of ‘transferred malice’. However, from R v. Pembliton, it is clear that this only applies to similar types of crimes, or ‘intra-crimes’. On these set of facts, we have two completely different types of crime: an offence against the person and an offence against property. In Pembliton, the defendant threw a stone intending to hit a person, but it missed and hit a window instead. The facts of this case are similar to the facts here and it is suggested that as there are two different types of crime ‘inter-crimes’, that it is improbable that Alan will be held liable for criminal damage.

**Chris**

**INTRODUCTION**

The damage caused by Chris to the painting when he fell on it could constitute criminal damage under s(1) of the Criminal Damage Act 1971. Therefore, there is the possibility that he could be held criminally liable for criminal damage.

**ACTUS REUS**

The painting is property belonging to another which has been damaged by Chris. We are not told exactly how Chris has damaged the painting, but damage has been construed widely by the courts. If the property is rendered imperfect or inoperative, criminal damage will have occurred (Roper v. Knott). If the owner is put to cost repairing the property, this will constitute damage (Roe v. Kingerlee), as he has fallen on a painting, if he has scratched it this may affect the value of the painting (Morphitis v. Salmon). Therefore, considering this wide interpretation of what will constitute ‘damage’ it seems highly probable that the actus reus of criminal damage will be satisfied here, on the facts.
MENS REA

The mens rea of criminal damage is subjective Cunningham recklessness, as per R v. G. In order to satisfy Cunningham recklessness it is necessary to illustrate that the defendant realised that there was a risk of the consequence occurring, but decided to take the risk anyway. It is apparent that Chris lacks the mens rea as he was pushed into the painting by Alan. Therefore, he may have a defence in sane automatism. Watmore v. Jenkins and Bratty v. Attorney General for Northern Ireland both illustrate that where a defendant had no control over his functions he may be able to use the defence of automatism.

CONCLUSION

Chris has committed the actus reus of criminal damage but has no mens rea. The damage was caused by an involuntary act on his part. Therefore, it seems probable that he would be able to successfully argue automatism as a defence for criminal liability in respect of the criminal damage.

Jenny

INTRODUCTION

Jenny told Ed to ‘back off’ and pushed him. This triggered a series of events which ultimately led to Ed’s death. There are a number of different possibilities in respect of criminal liability for Jenny, ranging from murder to assault.

MURDER

The actus reus of murder is an unlawful killing, which is what has occurred here. However, for Jenny to be held liable for murder, it would be necessary to demonstrate that she had the mens rea of murder. It would have to be shown that she had the intention to kill or cause GBH (malice aforethought, express or implied). It seems highly unlikely from the facts that Jenny had an intention to kill or cause GBH, as she merely shouted at him and pushed him. If in the unlikely event Jenny was charged with murder, neither the doctor’s negligent administration of medication that Ed was allergic or Ed’s thin skull would break the chain of causation. The courts stated in R v. Cheshire that as long as the victim’s injury was still a significant and operative cause of death, medical treatment that falls within the ‘normal’ band of incompetence will be regarded as foreseeable, and for this reason, will not break the chain of causation. Additionally, it is clear from cases such as R v. Blaue and R v. Haywood that the ‘egg shell thin skull’ test will apply in such situations. This has the effect, that if the victim has a pre-existing weakness, even if the defendant does not know about it, it will not break the chain of causation in respect of murder and the defendant can still be held criminally liable.
MANSLAUGHTER

Unlawful and dangerous act (aka constructive manslaughter) may perhaps be more applicable. In order to establish this offence, it is necessary to show that there has been an ‘unlawful’ act and a ‘dangerous’ act by the defendant (*R v. Mitchell* and *R v. Franklin*). When Jenny shouted at and pushed Ed, she committed the unlawful acts of assault and battery as per s(39) of the *Criminal Justice Act 1988*.

An assault is where the victim apprehends the immediate application of force. As Jenny shouted at him first to ‘back off’ before she pushed him, it seems probable that Ed would have apprehended the immediate application of force. The act of pushing Ed itself was the unlawful application of physical force (*Collins v. Wilcock*). The mens rea for assault is to intentionally or recklessly cause the victim to apprehend the infliction of immediate force (which it is probable Ed did comprehend). The mens rea for battery, intentional or subjective reckless infliction of force (*R v. Venna* and *R v. Spratt*) is also satisfied in this instance, as it is clear that Jenny intentionally pushed Ed.

MENS REA

1) The mens rea for the original offence (the assault and battery) which are satisfied here.

2) An act would be considered dangerous if it was such as ‘all sober and reasonable people would inevitably recognise must subject the other person to, at least, the risk of some harm resulting there from, albeit, not serious harm’. (*R v. Church*). On these facts, the reasonable person would find that when Jenny pushed Ed she did create a risk of, at least, non-serious harm.

This would suggest that Jenny could be held criminally liable on the basis of manslaughter. However, a different approach is taken in respect of the ‘thin skull’ in manslaughter cases. If Ed was elderly and frail, it might be foreseeable that the reasonable person would have realised it was dangerous to push Ed, as demonstrated by *R v. Watson*. However, *Watson* states that the sober and reasonable bystander will be endowed with whatever knowledge D happened to possess. If Ed was not elderly or visibly vulnerable, Jenny cannot be held liable for manslaughter. This is apparent from *R v. Dawson and Others* where a conviction for manslaughter was quashed on the basis that there was no way that the defendant could have known about the victim’s heart condition. Unless Ed showed some obvious sign of infirmity, the principle in *Dawson* is applicable to this set of facts.
CONCLUSION

There are a range of different offences that Jenny could be found criminally liable for (although it should be noted, she cannot be found liable for all of them! Just one!). On the facts, Jenny will not be held liable for murder because she lacks the mens rea. She may be liable for manslaughter, although this will depend on whether Ed showed any visible signs of weakness, e.g. old age, infirmity, etc. It seems most likely, on the facts, that Jenny will only be held criminally liable for assault and battery.

Joe

INTRODUCTION

Here, we have a doctor who would have been able to help Ed, but chose not to because it was his day off. So here we have a possible omission and a consequent death, so the question arises as to whether Joe could potentially be found criminally liable for gross negligence manslaughter.

CONCLUSION

Doctors have a duty of care to their patients and if they breach that duty of care they can be liable in gross negligence manslaughter (R v. Adomako). However, the fact that Joe is off duty is crucial. If he had been at work and an omission on his part had led to the death of a patient that would be one thing. However, here, as Joe is off-duty and has no relationship with Ed (e.g. R v. Stone and Dobinson, R v. Gibbins and Procter), and has not involved himself in the situation, he does not owe Ed a duty of care. Although Joe had a moral duty to assist Ed, he did not have a legal one. Unlike countries such as France and US states such as Vermont, England has no Good Samaritan law which forces individuals to help others in danger, as it is considered too restrictive of individual freedom and potentially a burden for particular claimants. Therefore, Joe cannot be found criminally liable for Ed’s death.

Mike

INTRODUCTION

The facts tell us that Mike took Ed’s watch without his permission. A set of facts relating to a theft may give rise to whether a theft, burglary or robbery has occurred. Here, we have a theft rather than a burglary because as a paramedic attending the scene it seems probable he would have had permission to enter the building and there is no indication of violent conduct on his part. Therefore,
the offence that may have occurred here will be a theft. In order to establish whether or not Mike can be held criminally liable for taking Ed’s watch, it is necessary to look to the *Theft Act 1968* to see if Ed has the actus reus and mens rea of theft.

**ACTUS REUS**

We know that the watch is tangible property for the purpose of s(4), it belonged to another s(3) and it was appropriated by Mike s(5). Therefore, the actus reus for the offence of theft is satisfied quite easily here.

**MENS REA**

In order to find Mike criminally liable for the offence of theft, it is necessary to establish that he is dishonest as per s(2) of the *Theft Act 1968* and that he has an intention to permanently deprive the owner as per s(6).

In most cases, the dishonesty of the defendant will be obvious and a jury will not need to be directed as to the meaning in law, of dishonesty as per *R v. Squire* and *R v. Price*. The *Theft Act* does not define dishonesty; rather it gives us three situations where a defendant will not be dishonest: that the defendant believes they have in law the right to deprive the other of it (*R v. Kell*), they would have the other’s consent if the other knew of the appropriation and the circumstances or the person to whom the property belongs cannot be discovered by taking reasonable steps (*R v. Small*). On these set of facts, it seems obvious that Mike was dishonest, which would suggest that there is no need for a jury to establish his dishonesty.

If upon further investigation of the circumstances, there is uncertainty, the jury will be directed to use the test established in *R v. Ghosh* and consider whether what was done would have been dishonest by the standards of reasonable and honest people and if so, did the defendant realise what he was doing was dishonest by these standards? It seems probable, that on this basis, Mike would be dishonest as we are told that he ‘decides to take the watch for himself’.

As regards s(6), Mike could argue that he was merely ‘borrowing’ the watch, in which case there would not be an intention to permanently deprive (*R v. Lloyd*). However, on the facts, it looks as if Mike has taken the watch for his own use and does not intend to return it, which would strongly suggest that there has been an intention to permanently deprive Ed of his watch.

**CONCLUSION**

It seems highly probable that Mike would be found criminally liable for stealing Ed’s watch, as the actus reus can be satisfied easily and so could mens rea,
unless some doubt can be shed on Mike’s motive for taking the watch, by his legal team.

**Dr Mud**

**INTRODUCTION**

Dr. Mud is a doctor who has been responsible for administering the wrong medication to Ed and who may ultimately been responsible for Ed’s death in hospital.

**ACTUS REUS**

Doctors do have a duty of care to their patients and can be criminally liable for positive acts and omissions which cause the patient’s death (gross negligence manslaughter, as per *R v. Adomako*). Here, it does appear as if Dr. Mud’s act has ultimately caused Ed’s death.

**MENS REA**

It is necessary to illustrate that Dr. Mud has the mens rea (gross negligence). Therefore, it would have to be demonstrated that Dr. Mud had one of the following states of mind when he administered the medication: an indifference to an obvious risk, actual foresight of a risk coupled with a determination to run it, an appreciation of a risk and intention to avoid it with a high degree of negligence in an attempt or an inattention or failure to avert an obvious risk. If there was information in Ed’s file indicating his allergy there may be such mens rea on the part of Dr. Mud, but not if it was an unknown allergy not mentioned in Ed’s medical file, which Dr. Mud did not know about. The bottom line is that, in accordance with *R v. Bateman* and *Andrews v. DPP*, it must be demonstrated that that a very high degree of gross negligence was required – more than mere inadvertence. Although administering the wrong medication was negligent, it seems improbable that it was such a high degree of negligence to satisfy the tests laid down by the aforementioned cases.
CONCLUSION

It is very possible that Dr. Mud had no idea about Ed’s allergy or had to act quickly and did not have time to consult Ed’s notes. However, it is very rare that a doctor is charged with gross negligence manslaughter. Even if in theory, one could indicate negligence on Dr. Mud’s part, based on the case law, it seems highly unlikely that he would be found criminally liable on these facts.

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