Model Answers to Potential Exam Questions

Chapter 2

1) Chris stabs his wife Jo in an argument at home. She is taken to hospital. The doctor who sees her is a young trainee working the nightshift and has been on duty for 36 hours. He gives Jo a powerful painkiller while she awaits surgery. Jo is allergic to the painkiller and her brain begins to swell. She is taken into surgery but her swelling is not noticed. She suffers brain damage as a result of the swelling and dies on the operating table when she loses the capacity to breathe for herself. Who has caused Jo’s death?

This doctrine is known as causation, and it means that the prosecution must prove that the defendant caused the outcome. This is sometimes difficult to prove, especially if there are several causes to juggle with. If it cannot be proved that the defendant caused the outcome, he will be acquitted of the offence. In criminal law there are two types of causation, factual causation and legal causation. Both types of causation must be met. The jury will decide whether or not causation has been met, as established by Pagett (1983).

Factual causation requires the defendant to have caused the outcome as a fact (i.e. if he were taken out of the equation, it would never have happened). This is called the “but for” test and was established by R v White (1910): “but for the defendant’s action, the outcome would not have happened.” It is usually very easy to meet factual causation. Factual causation alone will not suffice as held in Dalloway (1847). Legal causation aims to pinpoint who is really at fault by finding the “operating” and “significant” cause. Chris stabbed Jo at the beginning of the chain of events. But for Chris stabbing Jo, she never would have died. Factual causation is satisfied. Legal causation requires the stab wound to be the operating and substantial cause of death. It is not clear that this is the case. There may be an intervening act — known formally as a novus actus interveniens — in the guise of the trainee who did not notice the swelling on Jo’s brain. If the defendant can foresee the intervening act, then it is simply part of his plan, and therefore it does not intervene as the new cause as seen in Pagett (1983). It has been accepted by the courts that extraordinary medical negligence will constitute a novus actus interveniens and break the chain of causation as a result of Jordan (1956) where the stab wound could not be said to be the cause of death after gross medical negligence, but this is very rare. According to Lord Parker CJ in Smith (1959): “only if the second cause is so overwhelming as to make the original wound merely part of the history can it be said that the death does not flow from the wound.” Beldam LJ in Cheshire (1991) used the terms “independent” and “extraordinary” to describe whether medical negligence had broken the chain of causation. The ignorance of the doctors must satisfy this test. It is unfortunate that the swelling in Jo’s brain was missed, but it is not extraordinary negligence that would break the chain of causation from Chris’s original stab wound. This violent act is not simply part of the history in this chain of events. The correct test according to Warburton and Hubbersty (2006) for intervening medical treatment is: “did the acts for which the defendant is responsible significantly contribute to the victim’s death?”
The answer to this may be “yes” in that she needed the painkillers and surgery as a direct result of the stab wound.

Applying both factual causation (White 1910) and legal causation (Smith 1959), a jury may find that Chris is the cause of Jo’s death. Even though her brain swelling was caused by medical treatment, this is not extraordinary enough to break the chain of causation and demote Chris’s actions to simply “part of the history” as confirmed in Pagett (1983) and Cheshire (1991).

2) Chris returns home later that night after the police interview him feeling very stressed. He is awoken in the early hours by a noise. He goes downstairs to find a gang of burglars. He managed to chase them away two months ago, but this time Chris has a heart attack and dies. The defendants, when charged with burglary and unlawful act manslaughter, argue that they did not cause his death. Are they correct?

In addition to the principles described above regarding factual causation (White 1910) and legal causation (Smith 1959), it must be shown that there was no intervening cause between the act and the death (Pagett 1983).

The defendants are arguing that the victim had a frail heart and this in fact was the cause of his death. If several causes are identified and they are all more than “slight” or “trifling”, then they must all be considered as held in Kimsey (1996). Typically, the defendant’s act of breaking in and shocking the victim will be the cause of death if the reasonable bystander would have seen the frailty of the victim when placed in the defendant’s position as confirmed in Watson (1989). It is not clear whether looking at Chris would expose his frail emotional state. A frail heart or an edgy emotional state has been accepted as a characteristic of the victim before. In Hayward (1908) a defendant was responsible for the death of the victim when she died of fright from an unknown weak heart condition following a threat of violence. This old rule was supported by Lawton LJ in Blaue (1975) when he said: “it has long been the policy of the law that those who use violence on other people must take their victim as they find them. The question for decision is what caused [the victim’s] death.” The law supports the finding of liability when a particularly vulnerable victim is targeted, but the ratio in Watson (1989) confirms that the reasonable bystander must recognise the frailty of the victim in circumstances of fright. Chris chased the burglars away once before, meaning that his frailty on this particular night would not have been obvious.

The burglars are the “but for” cause of Chris’s death in that, had they not scared him, he would not have died (White 1910). However, on the application of Watson (1989), a reasonable bystander would not have appreciated his frail emotional state. Chris’s death is therefore unforeseeable and a jury may find that the defendants are not the legal cause of Chris’s death.