

## **W201 The Individual and the State**

### **Study notes on manslaughter**

#### **Voluntary manslaughter**

This arises when an accused is charged with murder but successfully pleads a special defence of diminished responsibility loss of control or suicide pact and a conviction for manslaughter is recorded.

#### **Involuntary manslaughter**

This arises where either

a) unlawful dangerous act manslaughter is proved

or

b) gross negligence manslaughter is proved.

One difference is in the mental element required. For voluntary manslaughter the prosecution must prove the mens rea for murder (intent to kill or cause GBH). Only then does the special defence apply. In involuntary manslaughter no intent to kill or cause GBH is ever required.

#### **a) unlawful dangerous act manslaughter**

There are two levels involved in this offence.

1. The first part of the concept is that liability arises for a death caused by an act which independently constitutes a criminal offence.
2. The second part of the concept is that the unlawful dangerous act must be 'dangerous' to qualify. 'Dangerous' means that objectively there is a risk of some harm.

#### **1. The unlawful act**

This must be a crime not a tort or civil wrong. It must also cause the death. Usually it will be an assault or similar crime but could include arson or damage.

Dangerous and careless driving are excluded as neither requires mens rea.

An omission can not qualify as an unlawful **act** but could qualify as gross negligence manslaughter.

The prosecution must prove the actus reus/mens rea of the unlawful act in the usual way.

**R v Lamb** 1967 C A is an example of a case where the prosecution failed to prove mens rea of any unlawful act. (Accused as a joke pointed loaded revolver at a friend and pulled the trigger not realising the empty chamber opposite the barrel would rotate automatically causing the gun to fire). There was no intent to frighten as the victim treated it as a joke too!

## 2. The act must be dangerous

This is a separate and additional requirement from **1.** above.

“The unlawful act must be such as all sober and reasonable people would inevitably recognise must subject the other person to at least the risk of some harm resulting therefrom albeit not serious harm” Edmund Davies J **R v Church** 1966 Div Court (quoted with approval in **DPP v Newbury** 1977 Lords).

This is a reasonable man objective test and can be satisfied even if the accused personally foresaw no harm.

This means that it is possible to commit unlawful dangerous act manslaughter without either intending or foreseeing any harm to anyone eg **DPP v Newbury** 1977 Lords (two youths pushed a paving stone off the parapet of a bridge into the path of a train and killed the guard). In this case the unlawful act was damage and the act was ‘dangerous’ because a sober and reasonable person would recognise the risk of some harm. It was not necessary to prove that the **accused** knew the act was dangerous.

The low threshold for this offence is illustrated by considering Section 47 or common assault where foresight of **apprehension** of immediate unlawful violence is all that would have to be proved as the mens rea of the unlawful act and no foresight by the **accused** that the act was dangerous would then be required on the **Church** test.

Courts have mitigated the effect of the objective test for what is ‘dangerous’ by attributing to the reasonable man the knowledge (or ignorance) of the accused eg **R v Dawson** 1985 C A (robbery at petrol station attendant with weak heart which is unknown to the accused dies of heart attack). This is the reverse of the causation rule that you take your victim as you find him!

Contrast **R v Watson** 1989 C A (burglary at house of 87 year old with serious heart condition - burglars abuse victim when he disturbs them and he dies of a heart attack - court hold that original ignorance of age and health of victim was overtaken by the knowledge of the accused gained in the confrontation).

The court will not attribute to the reasonable man the mistaken beliefs of the accused eg **R v Ball** 1989 C A (accused mistakenly believed he had loaded his gun with blank cartridges and shot someone dead).

### **b) gross negligence manslaughter**

There has long been liability at common law for causing death by act or omission by gross negligence.

Most cases involve extreme medical negligence or bad driving.

Courts have used the civil law concept of breach of a duty of care as the necessary cause of death and then define how bad the negligence has to be. The definition adopted is circular - the negligence must be bad enough for the jury to consider it criminal.

**R v Bateman** 1925 C A Lord Hewart

“the facts must be such that the negligence of the accused ... amounts to a crime against the state and deserving of punishment”

**Andrews v DPP** 1937 Lords Lord Atkin (a motor manslaughter case)

“a very high degree of negligence is required ... “reckless” most nearly covers the case”.

After **Caldwell** 1982 Lords the law on gross negligence was redefined in accordance with the Caldwell objective test in **R v Lawrence** 1982 Lords and **R v Seymour** 1983 C A. This immediately led to the practical problem that the direction to the jury based on Caldwell was largely unintelligible. As a result the **Caldwell/Lawrence** test was abandoned in **R v Adomako** 1995 Lords. In **Adomako** (a medical negligence case) the Lords relied on the abolition of causing death by reckless driving in 1991 as a reason to abandon the case law built up round recklessness in motoring cases.

Lord Mackay in **Adomako** set out this approach:

1. Is there a duty of care to the victim who has died?
2. Is there a breach of the duty?
3. Was there a risk that the accused’s conduct would cause death? **R v Singh** 1999 C A.
4. Has the breach caused the death of the victim?
5. If so should the breach be characterised as gross negligence and a crime?

In explaining the term ‘gross negligence’ Lord Mackay said:

“The essence of the matter (which is supremely a jury question) is whether having regard to the risk of death involved the conduct of the defendant was so bad ... as to amount in their judgment to a criminal act or omission”

An explanation of ‘duty of care’.

A ‘duty of care’ arises in civil cases where it is reasonably foreseeable that an **act** may injure another person. There are some restrictions imposed by courts as a matter of policy but liability is very wide.

As we have already seen liability for **omissions** (which also depends on the existence of a duty) is much narrower. If however a duty is found to exist there can be liability for gross negligence manslaughter (where UDA manslaughter would not be available as there is only an omission and not an unlawful act). An example is **R v Evans** 2009 C A where a drug dealer supplied her 16 year old half sister with heroin and failed to summon medical assistance when she overdosed with fatal consequences. The Court of Appeal were prepared to find a duty of care arose relying on the principle in **R v Miller** 1983 Lords that the accused had created a dangerous situation.

A comparison with causing death by dangerous driving

Section 1 of the Road Traffic Act 1988 punishes driving which falls **far** below the standard of the careful and competent driver. The maximum penalty is 10 years.

Courts and juries only expect manslaughter to be charged in a really serious case where a sentence of life imprisonment (rather than up to 10 years) might apply.

### **Reform of the law of murder and manslaughter**

Law Commission proposals (published in November 2006 as Report No 304) would recast the law of homicide as follows:

#### **First degree murder**

Intent to kill

Intent to do serious injury (with awareness of a serious risk of death)

Mandatory life sentence

#### **Second degree murder**

Intent to do serious injury (*previously murder*)

Intent to cause some injury/fear of injury/risk of injury (with awareness of a serious risk of death) (*previously UDA manslaughter*)

Provocation, Diminished Responsibility and Suicide Pact (*previously involuntary manslaughter*)

Discretionary life sentence

### **Manslaughter**

Intent to cause some injury/awareness of a serious risk of injury (*previously UDA manslaughter*)

Gross negligence (*previously gross negligence manslaughter*)

Discretionary sentence up to a fixed term of years

### **Duress**

Duress would become a full defence to first and second degree murder and attempted murder.

### **Comment**

Many judges and academics consider major injustices in this area of the law are caused by the operation of the mandatory life sentence which presently applies to all murder convictions. For political reasons (many politicians do not wish to be considered soft on crime) abolition (and substitution by a discretionary life sentence) is not in prospect. In the Law Commission's terms of reference the Home Secretary stipulated that the mandatory life sentence was to remain. The Law Commission is therefore advocating the next best thing – a narrowing of the definition of first degree murder (compared with the existing offence of murder) to exclude more homicide offences from the mandatory life sentence. Judged from this viewpoint it can be argued that the new structure is fairer. However the new structure is not as simple or clear as it could be and as recently as 2005 the Law Commission was proposing that first degree murder should only include intentional killing. All cases of intent to cause serious injury were to have been included as second degree murder along with reckless killing and voluntary manslaughter. Manslaughter would then have covered gross negligence and the least serious examples of UDA manslaughter. Some senior judges and the police argued against this and in favour of broadening first degree murder to include serious cases of intent to cause serious injury. Partly to achieve consensus the Law Commission have acceded to these representations.

The Home Office later put the 2006 Law Commission proposals out for further consultation.

Eventually the government decided in 2008 to introduce legislative proposals for the reform of partial defences to murder (provocation and diminished responsibility) as a first step. These proposals are contained in the Coroners and Justice Act 2009 and came into force on 4 October 2010.

In July 2010 the Coalition Government announced a review of sentencing policy and indicated that the government was mindful of the Law Commission's proposals for reform of the law of murder and the new Justice Secretary and Lord Chancellor was sympathetic to them.

