

Harry and Ivan case

Discuss Harry and Ivan's criminal liability for the death of Jayne

Harry and Ivan would be charged with a count of murder; however, as it is clear that there is no mens rea and intent for murder present, this will be substituted for manslaughter. With no mens rea it is clear that it is not voluntary manslaughter, this leaves involuntary manslaughter for the courts to consider, either unlawful act or gross negligence manslaughter.

Harry's liability has to be taken into account; gross negligence and unlawful act manslaughter need to be considered. By all means, the supply of drugs to Jayne from Harry is an unlawful act. This must be considered to be an act that all sober and reasonable people would realise there is a risk of harm. The reasonable man would realise that there would be the risk of some harm to Jayne as she was a first time user. The act must also cause the death. Kennedy (2007) should be looked at to determine if Harry's act caused the death of Jayne. In Kennedy, on appeal to the House of Lords, it was ruled the defendant had not done an unlawful act which caused the death of the victim. This is demonstrated further in Dalby (1982) – the victim's act of injecting themselves was an intervening act that broke the chain of causation. Therefore as Jayne injected herself she broke the chain of causation leaving Harry not guilty of unlawful act manslaughter. He would be convicted of supplying drugs though.

Gross negligence manslaughter is still a possibility. The fact that it is Harry's house instantly gives him a duty of care to all of those under his roof. It must now be established that he broke the duty of care through his negligence, and it was 'gross' and it was the substantial cause of the death. Harry left the house for some hours and because he left Jayne when her breathing was odd which was made clear to him, he has broken his duty of care in a negligent way, even though it was not an illegal act. As with Ivan, this act must be proved to be the substantial cause and of a gross nature. When Harry left, Ivan was still conscious and drug free so it could be argued that if Jayne got worse, Ivan should deal with it, opted to it being Harry's responsibility. If this was the case, then this would also negate the 'gross' nature of the negligence leaving Harry not guilty of gross negligence manslaughter.

When considering Ivan's liability, gross negligence manslaughter must be considered, it should be established whether or not he owed a duty of care to Jayne as a result of their relationship. In Stone and Dobinson, a relationship can be sufficient evidence for there being a duty of care owed, however as Ivan and Jayne share neither blood nor legal relationship, it may be taken this is not sufficient for a duty of care to be owed. Providing a duty of care has been established, Ivan could be convicted of gross negligence manslaughter. The negligence must amount to being 'gross' and must show a blatant disregard of life and safety towards another; it must also be the substantial cause of the death. When Ivan cannot rouse Jayne, he does not get help but instead takes drugs himself. If it has been recognised he

owes a duty of care to Jayne, this is a negligent act and as her breathing was odd and he could not rouse her, then this negligence could be taken to be 'gross'. However, it has to be considered whether or not the negligence was the substantial cause of the death. If it's decided that Ivan getting help would have saved her life, then Ivan's negligence would have been the substantial cause.

Next, unlawful act manslaughter against Ivan has to be considered. It requires an unlawful act to be committed and this act must be dangerous to the extent that it causes the death of the victim. The defendant must have a sufficient amount of mens rea for the unlawful act. Ivan does have the mens rea for helping Jayne take the drugs, and he did commit an unlawful act in helping her take the drugs as he became part of the mechanics of taking the drugs. However, was it dangerous enough to cause Jayne's death? In *Rogers (2003)* the Court of Appeal ruled that by helping another inject you became part of the mechanics of taking the drugs, thus if death occurred as a result, the defendant may be guilty of manslaughter. Although, the House of Lords ruled this to be incorrect, by providing a tourniquet you are not administering the noxious substance so these two acts cannot be regarded as being in cycle. If the House of Lords is to be taken as precedent, Ivan faces no charge of unlawful act manslaughter.

Both Harry and Ivan cannot be charged of unlawful act manslaughter; however there are some valid points of gross negligence manslaughter against both of them. Both owed a duty of care to Jayne – the fact that Ivan was present throughout and was aware of Jayne's condition getting worse, he still ignored it and took drugs himself, he is more likely to get convicted. However on the other hand, there is a strong case for Harry to be convicted as he vacated the flat completely.