

Involuntary Manslaughter – Homework

{ In struggling to define the boundaries of involuntary manslaughter the courts have encountered considerable difficulties and produced a muddle }

Discuss whether this criticism is justified.

Involuntary manslaughter comprises the commission of the actus reus of homicide without malice aforethought, which is required for specific intent offences like murder. There are now, since *R v Adomako* [1994], two clearly recognised kinds of involuntary manslaughter. These are unlawful act manslaughter (constructive manslaughter) and gross negligence manslaughter also sometimes referred to as 'reckless' manslaughter.

Unlawful act manslaughter arises where the defendant has first committed an unlawful act, and as a result, someone dies (causation in fact and in law is required). In addition, the unlawful act must be dangerous on an objective test; i.e. it 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' (established by the Court of Appeal in *Church* (1996)). The act need not be aimed at a person; it can be aimed at a property, provided it is 'such that all sober and reasonable people would inevitably recognise must subject another person, to at least, the risk of some harm' (*Goodfellow* (1986)). Here the defendant set fire to his council house in order to be rehoused, but ended up killing several persons inside. The defendant was liable for unlawful act manslaughter, as the criminal act did not need to have been directed at the victim or any other persons.

The risk of harm referred to in the objective test relates to physical harm; fear and apprehension are not sufficient, even if they cause the victim to have a heart attack. In *Dawson* [1985], the victim died of a stress related heart attack due to a robbery, which had taken place at a petrol station where he had worked. The defendant did not know of the victim's weak heart nor could have a normal prudent person have foreseen the victim's death, and therefore, the defendant was not guilty of unlawful act manslaughter. However, if the victim were obviously frail to a normal prudent person and so was the risk of physical harm to him, then the conviction of involuntary manslaughter would be upheld. This was the case with *Watson* [1989]. Furthermore, it must be proved that the defendant had the mens rea for the unlawful act, but it is not necessary for the defendant to realise that the act is unlawful or dangerous (*Newbury and Jones* (1977)).

The other main type of involuntary manslaughter is gross negligence manslaughter. This is manslaughter caused by such disregard for life and safety of others (beyond mere tortious negligence) that it warrants punishment by the criminal law. This is also, where a defendant owes the victim a duty of care and commits a lawful act in a very negligent way or simply fails to act. In the case of *Adomako* [1994], the defendant (an anaesthetist) failed to notice and remedy a defect in the breathing apparatus despite the sounding of an alarm that should have notified him of the problem. The flow of oxygen ceased and the victim died shortly afterwards, *Adomako* was convicted of manslaughter through gross negligence. To be liable the defendant must be in breach of a tortious duty of care she owed the victim and this breach must have caused the victim's death. If this is the case then the jury must then go on to consider whether the negligence (act or omission) was so 'gross' that it should amount to a crime in addition to a tort.

Prior to *Adomako* [1994] it was held that manslaughter could be committed by recklessness, based on an objective standard. In *Adomako*, it was stated that this was the wrong test for manslaughter though the word 'reckless' might be appropriate. However, the latter term should be avoided to curb confusion with the law on recklessness. Reckless in this case, should have the meaning that the defendant had been indifferent to an obvious risk of injury to health, or actually foreseen the risk but determined to run it (*Stone and Dobinson* (1977)). It is probable that reckless manslaughter only exists in motor manslaughter cases established in *Adomako*.

It is true that the courts have encountered considerable difficulties in defining the boundaries of involuntary manslaughter, but since *Adomako*, it seems that the courts have finally clarified its position on involuntary manslaughter and is therefore, no longer seen to have produced a muddle. However, many critics often voice the criticism that the objective rule in unlawful act manslaughter is unfair, as it does not reflect the moral culpability of the defendant as he is compared to a normal

prudent person, as opposed to someone with similar characteristics. In addition, in some cases such as Adomako (a trained professional anaesthetist), comparing him to a normal prudent person in the objective test is unacceptable. A fairer rule would be to compare the defendant with someone, of similar character, for example Adomako could be compared with another trained anaesthetist of a similar sex, age, expertise, and experience or whatever characteristics which might be relevant or appropriate to the case.