

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.

Involuntary manslaughter contains too many areas for conviction.

I am not arguing with the law having different areas for different types of involuntary manslaughter but at they need to be defined and there is too much variation for conviction of the same offence.

The areas of involuntary manslaughter are Recklessness, Gross Negligence and Constructive. If these were separate then they may work better but there are many overlaps.

In Recklessness there is a subjective test (*Cunningham*) and an objective test (*Caldwell*).

~~The Cunningham Test:~~

- ~~a) Did the defendant foresee the possibility of the consequence occurring, and~~
- ~~b) Was it unreasonable to take the risk.~~

~~The Caldwell Test:~~

- ~~a) Did the defendant create an obvious and serious risk? And~~
- ~~b) i) Gives no thought to the possibility of a risk, or~~
  - ~~ii) Recognised the risk but continued anyway.~~

The Caldwell test is, as mentioned previously, an objective assessment and it convicts many people who are tested under it. Unfortunately it does not take into account people who are not mentally capable of considering the risk, for example, *Stephenson* [1979]. This case was where the defendant lit a fire to keep warm in a stack of hay but he did not consider the risk of the hay catching light. It turns out that he was a schizophrenic who was unable to measure risk but he was tested by the Caldwell test and he was convicted of Criminal Damage (though this is not a Reckless Manslaughter it is relevant in the explanation of the objectiveness of the Caldwell Test).

Caldwell is not currently being used but there is always the possibility of it being used again which is especially worrying as it is a test, which convicts most of the defendants tried by it. As mentioned, it is not being used at the moment, it is described as being in suspended animation but that is not to say it will never be used again.

The main problem with having the law this way is that it gives the judges too much leeway as to how they are going to convict a defendant. If the defendant cannot be convicted through one test then the judge may well try the other too see if that would work.

I feel that Gross Negligence is the part of involuntary manslaughter that needs the most revision, as it is very confused. Gross Negligence is a strict liability offence, which means that mens rea is not needed to convict a person of this crime. This makes it far too easy to convict a person of a crime as serious as manslaughter. To decipher if a person is liable for Gross Negligence Manslaughter the following is asked of the defendant; Duty of care, Breach of care and Causing damage (e.g. death). If a person 'passes' this test then this is where the determination of the crime gets hazy. There are two different cases, either of which is used to determine whether the defendant's actions were illegal. The cases are Bateman [1925] and Adomako [1994]. The definition of possible liability of Gross Negligence Manslaughter in Bateman is:

"Did the negligence of the accused go beyond a mere matter of compensation and showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving punishment?"

The definition in the case of Adomako is:

"Was the conduct of the defendant so bad in all the circumstances as to amount in their judgement to a criminal act or omission?"

The test in Adomako is circular, which allows the jury to decide how they feel on the matter, and they then apply that to the question. It gives too much power to the jury, it is almost as if they are deciding the law

Constructive Manslaughter is the crime in which a defendant can be convicted of all too easily. The Caldwell and Cunningham tests are used in this area too.

There is a test that has been set out which decides if a defendant is liable of constructive manslaughter. The test can be defined as the 'ingredients of an offence'.

The ingredients of an offence:

1. An unlawful criminal act.
2. Element of physical danger.
3. Causal death.

That sounds fine but the problem with this is that the 'unlawful criminal act' does not have to be connected to the death see, for example, the case of Cato [1976]. The defendant in that case was convicted of constructive manslaughter and the unlawful act was possession of an illegal substance. The problem was that the

drugs were not his. His friend, to whom the drugs belonged, had prepared the drugs himself and had asked Cato to inject him as it seems he didn't want to do it himself. The friend died and Cato was convicted under the unlawful act of possession even though he only came into contact with the drugs for a very small amount of time. Surely this is not justice.

The minor crimes in this area of involuntary manslaughter are blown out of proportion when they should at least be connected to the crime. The criminal act in majority of cases in which a defendant has been convicted of constructive manslaughter is assault, namely Common Assault. The problem with this is that Common Assault is based on causing fear in the victim and this is very hard to define, especially as the victim is dead.

The problem with all the areas of involuntary manslaughter is that they are not consistent and that is what is creating the muddle. The confusion, which is borne from this inconsistency, is what is demeaning the English Legal System.

It is not surprising that the courts are in disorder because the law needs to practice justice and that is what the judges are there for. If the judges cannot do their job then it is obvious that problems are going to occur.

I do not think that there are any points which agree with the question put to me as it is very obvious that the law needs to change, as highlighted by the Law Commission, but when it does is another matter.