

Unit 4 Essay

Discuss the criticisms which may be made of the law on murder (including voluntary manslaughter)

Contrary to Common Law murder is defined as the killing of a human being within the Queens Peace with malice aforethought and on conviction carries a mandatory life sentence. On the other hand voluntary manslaughter is a Common Law offence and carries up to life imprisonment.

For both murder and voluntary manslaughter the Actus Reus is exactly the same: a voluntary act (or omission in some cases) that is the factual and legal cause of the death of a human being.

In the UK there is no legal definition of death and this could lead to uncertainty when the jury is considering whether the defendant is guilty or not. Problems are yet to occur and even when the Criminal Law Committee considered this problem in 1980 they concluded that statute should not intervene. So the courts have continued to interpret the meaning of death where necessary. For example in *R V Malcherek* the court decided it was suitable to assume that death occurs when the victim is brain dead. However they also said that turning off life support does not break the chain of causation when seeing if a defendant is liable.

Also thanks to the passing of the Law Reform Act (year and a day rule 1996) a defendant can be held liable even if the victim dies three years after the incident whereas before the defendant could be found liable only if the death occurred within a year and a day of the incident. However if the death occurred more than three years after the incident or if the defendant has been convicted of a Non Fatal Offence the Attorney General must consent to the prosecution. Some people may find this limiting in prosecuting killers when new evidence arises thanks to scientific progress.

The Mens Rea for murder is intent to kill or cause Grievous Bodily Harm. This sometimes may cause criticisms as it means that people who intentionally end the suffering of a loved one may be found guilty of murder but a person who plants a bomb and gives warning (but someone dies in the blast) will not be liable as he did not intend to kill so does not have the sufficient Mens rea.

Euthanasia is illegal in the UK however it is not illegal for doctors to issue drugs for pain relief that may accelerate death. This was decided in the case of *Dr Adams* where Lord Devlin said that if the primary effect of the drugs/injection is pain relief then death will effectively be a secondary effect of the treatment. Many people argue that this does not really conform with current homicide laws but we live in a compassionate society and so far no amendments have been made.

The House Of Lords Select Committee recommended replacing intent to kill or cause GBH with intent to cause death or intent to cause serious personal harm, being aware that death may be a result from that harm.

Another problem that has occurred when establishing whether the defendant has the required Mens Rea is that it has proven hard to see whether intent was oblique or not as the definition established in *R V Woolin* is not very clear or thorough (the consequence was a virtual certainty and the defendant appreciated that).

Some people may find it unjust that a defendant who intended to cause GBH will only be guilty of section 18 if the doctor saves the victim's life but if the victim dies the

defendant will be guilty of murder and will receive a mandatory life sentence. So he will be given a longer sentence even though his actions were the same.

If there are mitigating circumstances the defendant can use the three partial defences (provocation, diminished responsibility, suicide pact) defined by the Homicide Act 1957 to reduce their liability to manslaughter.

To see if the element of provocation can be satisfied we must see whether the provocative words or actions, where there was a sudden and temporary loss of self-control as in *R V Duffy* and we must also see if the reasonable man would of acted as the defendant did. (Section 3 Homicide Act 1957)

Some people think it's inappropriate that the defendant may use an innocent act of the victim as his partial defence. For example when a baby cries as in *R V Doughty*. It seems unreasonable, as the victim did not intend to provoke the defendant in any way. Some criticise the fact that a sudden and temporary loss of self-control is a part of the partial defence. This, in a way, means that it is more acceptable for someone to kill because they lost their temper than someone who kills a loved one who is terminally ill, as in *R V Cocker*, without the loss of temper.

It also can be said that it discriminates against women as women don't usually snap but their anger builds up. This has been considered in *R V Thornton*, *R V Ahluwalia* and *R V Humphries*. In *R V Ahluwalia* it was said that sudden does not mean the same as immediate and as long as there was a last straw and a final snap then there could still be provocation.

Also in *R V Humphries* it was said that the whole history of provocation should be taken into account. However the courts think that this provides women with a "licence to kill".

Another problem that must be considered is what characteristics of the defendant can be transferred to the reasonable man when applying the objective test.

Today, as in *R V Holley*, only the defendants' sex and age are relevant and the features that make a defendant more prone to react to provocation should be dealt with under diminished responsibility as suggested by the Privy Council.

There are a number of issues, which cause concern regarding a partial defence of diminished responsibility.

A person may avoid being convicted of murder and get the conviction reduced to manslaughter if he can prove that at the time of the killing he was suffering from an abnormality of mind, whether caused by a defective development of the mind, an inherent cause or disease or injury, which was such as to successfully impair his responsibility for his action (Section 2 Homicide Act 1957).

Sometimes however the courts have found it hard to accept Diminished Responsibility as a defence as public opinion as sometimes been against it. For example in *R V Sutcliffe* the defendant was the "Yorkshire Ripper" and he was convicted of murder even though there was medical evidence that he was a paranoid schizophrenic. Also the meaning of "abnormality of mind" is not very clear as it does not mean abnormality of the brain so they cannot base it upon medical evidence. In some cases it has been questioned whether alcoholism can be used as a partial defence (*R V Tandy*, *R V Gitten* and *R V Deitschmann*) but there is no specific test for this so the court must decide based on the circumstances.