Question

Q, believe that the pistol which he was about to clean was loaded, pointed it at his friend R. R laughed and pretended to be shot. However, the gun went off and, in fact, R was killed. Unknown to Q, Q's on had loaded some bullets into the pistol.

Advised Q. What difference, if any, would it make to your advice if Q had been drinking alcohol-free beer which Q'son had laced with a strong sedative and had caused Q to become befuddled so that Q believed that he was not pointing the gun at R?

Suggested Solution

Q → R (Murder)

- Finding facts that Q did not intend to kill or cause GBH to R.
- It would not satisfy the mens rea of murder.
- Follows R v Hancock and Shankland [1986], Q did not have the foresight of consequences flowing from his act and the degree of probability of 'natural consequences'. In the matter of laws are so important to consider in inferring whether the result Q was intended.
- Follows R v Nedrick [1986], Q did not recognise that R's death or serious harm would be 'virtually certain' to result from his act. It is the matter of laws to consider in inferring whether Q intended to kill or do serious bodily harm, even though he might not have had any desire to achieve that result.
- Q is not found guilty of murder.

Q → R (Constructive Manslaughter)

- Without the necessary mens rea for murder, it would be possible to give rise of unlawful killing and termed into involuntary manslaughter.
- In fact, Q would probably not have contemplated the death of R at all.
- Therefore, Q may be liable for constructive manslaughter (manslaughter by an unlawful and dangerous act).
- Follows R v Lamb [1967], constructive manslaughter requires an unlawful act; the mens rea for the unlawful act must be present.
- Because Q's act was dangerous, but not unlawful.
- On the other hands, Q believed there was no danger as he believed the gun was empty is irrelevant as it has been established in R v Ball [1989] that the 'dangerousness' of the unlawful act must be judged objectively.

- It is emphasised that if the reasonable person would foresee that pointing a gun, which one believed was unloaded, at someone and pulling the trigger would expose that other to danger.

Q → R (Reckless Manslaughter)

- Alternatively, Q may be liable for reckless manslaughter (manslaughter with subjective recklessness as to the risk of death or bodily harm).
- Reckless manslaughter sometime called motor manslaughter, it is no longer applicable and substituted by gross negligence manslaughter.
- R v Seymour [1983], the necessary mens rea for reckless manslaughter was Caldwell recklessness as to some harm. There must be an obvious and serious risk of some harm, and (a) either the defendant must have realised that risk and decided to take it, or (b) the defendant gave no thought to what was an obvious and serious risk of some harm.
- R v Lawrence [1982], the mens rea of the offence was driving in such a manner without giving any thought to the risk or, having recognised that it exists, nevertheless taking the risk.
- Kong Chuek Kwan v R [1985], the Privy Council affirmed the proposition of reckless manslaughter upheld by R v Lawrence and R v Seymour. The Privy Council stated that this was a 'comprehensive' test for the purposes of all involuntary manslaughter that did not fall under the heading of constructive manslaughter.
- At the past, by these doctrines, the offence of reckless manslaughter should be applicable, even though without reference to the risk of damage to property.
- The evidence is that pointing a firearm at someone and pulling the trigger does create such a risk even if it is believed that the firearm is unloaded. In this circumstance, the type of recklessness is recognised as the Caldwell objective reckless.
- Finding facts supported that Q was aware of the risk and went ahead regardless or had not given the matter any thought. (Caldwell objective reckless)
- Alternatively, if Q had considered whether there was a risk that the gun would gone off, but had wrongly concluded that it was safe, the position is less certain.
- In this scenario, there may be a case where Q considered whether there was a risk of harm and decided that there was none (wrongly concluded to be safe).
- Q was not reckless within the precise wording of Lord Diplock's definition in Caldwell because he had given considerable thought to the risk but come to the wrong conclusion as to its significance.
- In this situation is sometimes referred to as the "lacuna" or "loophole" in the Caldwell principle, this matter was consider by House of Lord in R v Reid [1992].
- There are two situations that can be drawn, either Q was aware that there was a risk, but

went ahead regardless (concluded no risk) or that Q had not given the matter any thought, as he did consider, whether there was a risk, but came to the wrong conclusion.

- Q may be found guilty of reckless manslaughter, as he created an obvious and serious risk of causing injury to R.

Q → R (Gross Negligence Manslaughter)

- R v Prentice and others [1993], the Court of Appeal held that except in motor manslaughter, appeared to confine with reckless manslaughter. The ingredients of involuntary manslaughter by breach of duty was required to prove existence of the duty, a breach of the duty causing death; gross negligence which the jury considered justified a criminal conviction. The test based on recklessness appropriate in motor manslaughter was inappropriate to manslaughter by breach of duty.
- Follows R v Prentice and others [1993], Q may be guilty of manslaughter by gross negligence, as if can be established that (a) he owed a duty to R, (b) he breached that duty which caused R's death and (c) that he acted with such gross negligence which the jury considers justifies a criminal conviction.
- However, the said duties found to exist in Prentice were of 'contractual nature'.
- But, the Court of Appeal did not elaborate what meant by 'duty' in Prentice and did not confine it to 'contractual duties'.
- Under the broader interpretations in Prentice, Q may be liable for breaching the general duty to avoid harming others by taking unnecessary risks and may be guilty of manslaughter by gross negligence.
- Consequently, it is irrelevant to consider whether there was a risk, but Q was wrongly concluded. It is important that the jury considers that it was so negligent that it justifies a criminal conviction.

Q → R (Defence of intoxication)

- It is well established in DDP v Majewski [1976] that it is no defence to a criminal charge that, by reason of voluntary intoxication (self-induced intoxication), unless the offence is required proof of a specific, or ulterior, intent.
- Follows R v Kingston [1993], it was not so clear established, as if it was the sole reason for an accused doing an act which gave rise to criminal charge at involuntary state of intoxication as valid defence, even if at the time of doing the act had the requisite mens rea.
- Involuntary intoxication is not a defence to a criminal charge if the prosecution proves that the defendant had the necessary intent. Albeit, that intention arose as a result of

circumstances for which the defendant was not responsible, even if under the influence of drugs administered secretly to the accused by a third party.

- The decision in Kingston proceeded on the basis that he ingestion of the drug would brought about a temporary change in the mentality or personality of the respondent which lowered his ability to resist temptation so far that his desires overrode his ability to control them. Thus we are concerned here with a case of disinhibition. The drug is not alleged to have created the desire to which the respondent gave way but rather to have enabled it to be released.
- Consequently, Q may argue his state of intoxication that he would not have pointed the gun at R and pulled the trigger had he not been drugged.
- Alternatively, Q may argue that the sedative drug administered to him by his son caused him enter into a state of automatism in which he was not in control of his acts followed the case R v Bailey [1983].(mens rea was not formed)
- "Automatism" applies to the situation where the defendant is not legally insane but because of some external factor he is unable to control what he is doing.
- In contrary, follows the principal authority of the Court of Appeal decision in Bailey [1983], an accused may be prevented from raising the defence of automatism, where there is evidence to show that he was in some way at fault in bringing about the state of automatism.
- On the other, the court requires to investigate whether Q was reckless in consuming the drug that caused him to enter into the state of automatism.
- Given facts supported that Q 's son has given him the drug without his knowledge, so that he would not therefore be reckless and should be allowed the defence of automatism.