

## Involuntary Manslaughter

In order to critically discuss whether the law governing involuntary manslaughter is in a satisfactory state, I must first look at the current law, outlining the problems, and then look at proposed changes.

Involuntary manslaughter –

- This is where death occurs as a result of conduct by the defendant.
- It has similar AR to murder, but lacks the MR of murder.
- It can include a very wide set of circumstances.
- The maximum sentence is life, but the judge has discretion in sentencing.
- There are three types of involuntary manslaughter, as well as a newer area which is emerging. These are;
- Constructive manslaughter (unlawful act manslaughter)
- Gross negligence manslaughter
- Subjective recklessness manslaughter
- And the newer area, corporate manslaughter.

### Constructive Manslaughter

This is made up from an unlawful and dangerous act where death is the consequence, even though death may never have been contemplated by the defendant.

#### AR

- The defendants' unlawful and dangerous act caused the death of another human being.

#### MR

- It must be proved that D had the MR for the unlawful act, but it is not necessary to prove that D foresaw any harm from his act.

An omission is not enough to create unlawful act manslaughter, as shown in the case of Lowe where the defendant was charged with neglecting his child. This could be seen as slightly unfair, as an omission causing death may be just as bad, as or even worse than an act causing death. For instance, flicking a cigarette in a petrol station, as it is an unlawful act, littering, and a dangerous act, and if a death occurred could amount to constructive manslaughter. Neglect to a child could be seen as more serious than this, but does not amount to constructive manslaughter. The unlawful act must be dangerous on an objective test rather than subjective. This may also be seen as unfair, as D may not have any intention to do any wrong, and may not realise that his act does in fact entail any danger. The risk need only be of "some harm" as shown in the case of Larkin where the defendant was threatening somebody with a razor. A drunken woman swayed and cut her throat. Manslaughter was upheld. The act also need not be aimed at the victim, as in Mitchell. The defendant was waiting impatiently in a post office queue. He punched a 71 year old man, falling into an 89 year old woman who fell and died. The defendant was convicted of manslaughter. The act need not even be directed at a person, it can be aimed at property, provided it

is dangerous in the sense that it is likely to cause harm to another, as shown in Goodfellow. In essence this means that, somebody may commit what is seen as a minor offence, with only “some” risk of danger, not aimed at anybody, yet still commit constructive manslaughter. The earlier example used of a man flicking a cigarette but in a petrol station is a good example of this. The unlawful act is only a minor offence, littering, and does not hold as much danger as say, pointing a loaded gun at somebody, yet D may be convicted all the same. The risk of harm refers to physical harm, something causing fear and apprehension in the victim is not enough. However, if a reasonable person would have known that some physical harm was likely to occur, and it causes death, such as a heart attack for example, then D may be guilty.

### Gross negligence manslaughter

#### AR

- D had a duty of care
- There was a breach of this duty
- This caused the death of V

#### MR

- Gross negligence is that which a jury considers deserves a criminal conviction.

This may be seen as unfair, as in essence it means that two people could do exactly the same thing, yet get different juries, one be convicted and the other not. For that matter, it means somebody could be convicted for a minor offence and yet not for a more serious offence dependant upon the particular jury. The leading case for GNM is Adomako, in which the defendant, an anaesthetist was convicted of manslaughter because he failed to notice a vital breathing tube had become disconnected during an operation, causing the death of V. There was an obvious duty of care (anaesthetist to patient), a breach of this duty (it was said that “a reasonably competent anaesthetist would have recognised the problem within 15 seconds”), and this caused the death of V. The duty of care is devised from a concept in civil law. He with a duty must take reasonable care to avoid acts or omissions which you can reasonably foresee. A duty may arise in several situations, such as a doctor to a patient, a driver to a pedestrian or, where a duty has been assumed such as in Stone and Dobinson, where the D’s assumed the duty of their sister, who suffered anorexia nervosa. The D’s failed to attract medical help when it was needed and as a result, she died. The breach of duty must be caused through gross negligence, a higher test than in civil law. The jury has to decide what is meant by gross negligence. In Andrews it is said that a “very high degree of negligence is required to be proved”. Bateman goes into this in more depth: “the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for life and safety of others as to amount to a crime against the state and conduct serving punishment”

## Recklessness Manslaughter

### AR

- D causes V's death.

### MR

- D must have foreseen a risk of serious injury or death occurring. This is subjective recklessness.
- D must have assessed that risk as at least highly probable to occur.

Before the case of Adomako, it was held that manslaughter could be committed by recklessness on an objective test. However this was abolished, making it fairer to the defendant. However, it could also be said that this is unfair on the victim, as any reasonable man may have seen a risk, yet if the defendant did not, he will not be found guilty. The case of Lidar shows subjective recklessness manslaughter: The defendant drove 200 metres with V hanging half out of the car window. V's feet got caught under the wheel and was dragged under and killed. The judge directed the jury on subjective recklessness. D was convicted and appealed on the grounds that it should have been referred exclusively on gross negligence. The court of appeal upheld D's conviction.

## Corporate Manslaughter

### AR

- Act of individual in company causes death of V

### MR

- Identification principle – “the embodiment of the company... and his mind is the mind of the company. If his is a guilty mind, that guilt is the guilt of the company.”

An example of the identification principle is shown in Tesco v Natrass. Tesco were found not liable for offences under the Trade Descriptions Act. Branch manager wrongly marketed goods. Acts were that of “another person” rather than tesco itself who had exercised “all due diligence” in training staff. This may seem a little unfair, as it means it is far easier to convict a smaller company, and harder to convict a larger one, as it is easier to identify the “mind” of the smaller company. This is shown in Kite. The managing director of an outdoor pursuits centre had ignored staffs concern over safety measures. Four people drowned when their canoes capsized in heavy seas. Both Kite and the company were convicted of manslaughter. In this case, it seems justice was done. But what if the Tesco case had been a smaller company? I suggest it would have been far more likely that a conviction be obtained. The case of P&O

European ferries shows how hard it is to gain conviction against larger companies. A ferry left with its doors open. There were 187 deaths. The case collapsed due to lack of firm evidence that the board of directors knew about or approved the unsatisfactory safety systems on board.

### Criticisms of Constructive Manslaughter

- Covers a very wide range of conduct.
- Death may be an unexpected result.
- A defendant who did not realise there was a risk of injury can still be convicted.

### Criticisms of Gross Negligence Manslaughter

- Test is circular as the jury are directed to convict of a crime if they think the conduct was criminal.
- Inconsistent verdicts between juries.
- The civil test for negligence should not be used in criminal cases because the purpose of civil law is different from criminal law.
- D is liable on an objective test, when all other offences against the person are subjective.

### Proposals

- Abolish constructive manslaughter.
- Abolish gross negligence manslaughter and replace with two new offences:
  1. Reckless killing:  
Person commits this if:
    - His conduct causes death of another
    - He is aware that his conduct may cause death or serious injury
    - It is unreasonable for him to take that risk having regard to the circumstances as he knows or believes them to be.
  2. Killing by gross recklessness:  
Person commits this if:
    - His conduct causes death of another
    - A risk that his conduct will cause death or serious injury would be obvious to a reasonable person in his position.
    - He is capable of appreciating that risk at this material time, but didn't in fact do so. AND EITHER
    - His conduct falls far below what can reasonably be expected in the circumstances. OR
    - He intends by conduct to cause some injury, or is aware of and unreasonably takes the risk and conduct causing the injury that constitutes the offence.

- Proposed change corporate manslaughter to special crime of “corporate killing”. The prosecution would have to prove:
  - A management failure is the cause of a person’s death.
  - That the failure constitutes conduct falling far below which can reasonably be expected of the corporation in the circumstances.
  - Also recommend the creation of a “safety director”, and custodial sentences where appropriate.
  - The health and safety executive would “police” and enforce the measures.