

## Involuntary Manslaughter - Homework

### Involuntary Manslaughter

Ivan was in a downstairs bar of a pub and was quite drunk. He heard shouting and screaming coming from a function room upstairs and went upstairs to see what the commotion was. As he tried to get into the upstairs room it led to an argument with James who had just come out of the function room. James lost his temper and pushed Ivan very roughly. Ivan stumbled and fell downstairs, suffering a bad neck injury. The ambulance which was called crashed into a car when taking him to hospital. Ivan was thrown across the ambulance. He died in hospital the next morning.

Later that day, many of the guests who were at a party in the function room, developed food poisoning. All the guests subsequently recovered except Kate. Kate had recently had major surgery and was still in a weakened condition. She died a week after the party. Hannah had supplied the food for the party, and investigations showed that she had not bothered to keep raw meat separate from cooked meat during preparation. As a result, cross-contamination had occurred and had caused the food poisoning.

Discuss the possible criminal liability of James for the involuntary manslaughter of Ivan, and the possible criminal liability of Hannah for the involuntary manslaughter of Kate.

25 Marks

James is likely to be guilty of involuntary manslaughter, in this case unlawful act manslaughter. In order for the criminal liability for involuntary manslaughter to be identified, there are four areas to be satisfied. The prosecution must prove that the defendant committed an unlawful act, which was dangerous, causing death and with the required mens rea present for the unlawful act. The unlawful act must be a criminal offence (*R v Franklin*) and not an omission (*R v Lowe*). The unlawful act can be anything that subjects the victim to some form of harm (*R v Larkin*). An act is dangerous if the sober and reasonable man recognises it exposes another to a risk of some harm (*R v Church*) and the risk of emotional damage isn't enough (*R v Dawson*). Additionally, it does not matter whether D realises the risk (*R v Watson*). In this case James committed the unlawful act of pushing Ivan (battery) which any jury and reasonable person would identify as dangerous due to the fact that Ivan fell and broke his neck. In order to be unlawful, the act has to have the required mens rea alongside it (*R v Lamb*), in this case we can infer that James had the mens rea for battery due to the previous argument and loss of temper.

The next issue in this case is that of causation. Causation relates to the culpability of the defendant in terms of events that have occurred before the offence takes place. This concept can be framed as a 'causation chain' in which a chain of actions and events happen which directly link the defendant to the death of the victim. If this chain of causation is broken, by third parties or the victims themselves, further testing must be undertaken to prove whether the defendant is liable for any accidents, injuries or deaths. Factual causation requires two tests to be satisfied in order to prove that James is the factual cause of Ivan's death. The two tests include the 'but for' test and the de minimis rule. The 'but for' test simply asks: but for D's actions would the victim have died in the way that they did? This was used in *R v White*. Here, if it were not for James' actions, Ivan would not have fallen down the stairs and died. Once causation has been applied for the 'but for' test, the de minimis rule must be applied which asks if D played a more than minimal role in the victim's death. We know that James played a more than minimal role in Ivan's death as he pushed him out of anger which was the cause of his death, therefore James' was more than just a 'slight link' to the victim's death (*R v Kimsey*).

As both the factual tests have been successful, the next step would be to apply legal causation which would ask whether D was legally responsible for the death of the victim. Legal causation can be satisfied by proving that the original act was an operative and substantial cause to the consequence

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or that any intervening acts were reasonably foreseeable. Operative and substantial causes in legal causation are usually medical interferences, (*R v Smith*). On the way to the hospital, the ambulance crashed which might have affected Ivan as he was thrown across the vehicle, so we could argue that the ambulance was an intervening act. Nonetheless, it's still James' act of pushing Ivan that required him to seek medical treatment in the first place so the chain of causation has not really been broken and the liability still falls on James. There aren't any actions of the victim that would be seen as intervening so we can't identify anything as reasonably foreseeable and proportional to the danger on the victims half. The second test for legal causation is the thin skull test in which D is expected to 'take the victim as they find them', meaning that D is still criminally liable for murder even if their victim had an abnormality in personality, nature and any other conditions that might cause them to react unexpectedly. (*R v Blaue*). In this case, there are no raised issues with the thin skull test and it does not apply in this situation.

Overall, it is likely that James' would be convicted of unlawful act manslaughter.

On the other hand, Hannah is likely to be convicted of gross negligence manslaughter. Gross negligence manslaughter was defined in *R v Bateman* as "such disregard for life and safety of others as to amount to a crime against the state, deserving of a punishment". There are four elements for the offence of gross negligence which are: existence of duty of care (to the victim), breach of duty of care which causes death, this breach has to be grossly negligent and therefore criminal. Lord Mackay explained in the leading case of gross negligence manslaughter *R v Adomako* 'the burden of proof is on the jury to decide whether D was grossly negligent using this criteria'.

We use the principles of civil law which stem from the case of *Donoghue v Stevenson* and apply them to the duty of care in gross negligence manslaughter. This is determined by law of torts as a duty owed to the victim, decided in *R v Adomako*. This could be a contractual duty of care (*R v Singh*) there is no contractual requirement (*R v Adomako*). In this case, Kate was owed a duty of care by Hannah as she was the caterer for the party and therefore the one in charge of the food. The next element is a breach of duty which requires the duty to be broken if the person in charge is not meeting the standard expectation of a reasonable person performing the activity. In this case, no reasonable caterer would keep both raw and cooked meat together as this obviously will cause problems like food poisoning, so Hannah has breached the duty of care for her guests as she failed to act accordingly. In order to class the negligence as gross, the negligence had to be so bad that it had to be designated as grossly negligent and therefore criminal. This was illustrated as 'the kind of forgetfulness which is common to everyone' in *R v Doherty* but there had to be a 'form of culpable negligence of a gross kind' in order to identify criminal liability. In this case, the negligence is considered to be gross due to the fact that it was such a large mistake, causing a large amount of people to fall ill. It is up to the jury to decide whether Hannah is grossly negligent and whether Hannah has seriously fallen short of the standard care owed to the victim.

We have to be able to establish that Hannah's negligence was the cause of the death. In this case, factual causation tests pass as 'but for' the actions of Hannah, Kate would not have died in the manner that she did which also explains that Hannah was a more than minimal factor in Kate's death - therefore leaving her factually culpable. There are no intervening acts that break the chain of causation for Hannah but the thin skull test has to be applied here in order to maintain her culpability for the victim's death. Hannah has to take responsibility for the death even if the victim had an unusually thin skull meaning any physical conditions or personalities that are abnormal. In this case, Kate was recovering from a surgery and was in a 'weakened condition' meaning that it is more likely that she would be affected more by Hannah's negligence than anyone else. This is shown as she was the only person who died as a result of Hannah's negligence and Hannah still remains responsible for the death of Kate. That being said, it is likely that the jury will decide that Hannah should be convicted of gross negligence manslaughter.