

Criminal Law Final

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3 Manslaughter:s 18(1)(b) *Crimes Act 1900*

Involuntary manslaughter

s 18(1)(b) – every other punishable homicide shall be taken to be manslaughter.

- **Punishment**
S 24 Crimes Act – imprisonment for 25 years max

3.1Manslaughter by unlawful & dangerous act

- **Burdens of proof**
P must prove both physical and fault element of unlawful act (if applicable)

1) Physical element:

[unlawful + dangerous act--- causes--- death]

Unlawfulness:

- What is an unlawful act?
Objective test per Wilson: a reasonable person in the accused's position, performing the very act which the accused performed, would have realized that he was exposing another or others to an **appreciable risk of really serious injury**. A risk of **some harm** resulting, albeit not serious harm (in Larkin) is not sufficient.
Examples:
 - Assault is common unlawful act for UDA manslaughter: **R v Iovridge** [an intoxicated man punched the victim who died in two days. The accused was charged with manslaughter]
 - Breach of criminal law: **Pemble** (1971); **R v Lamb** (1967)
 - An unlawful omission is not sufficient : **Lowe**
 - must be a **positive act**
 - Unlawful act need not be directed at deceased: Mitchell (1983)
 - Important to identify unlawful act that causes death because it determines what ME the P is required to prove

Dangerousness:

- **Objective Test:**
 - Ie. P need not prove that A knew act was dangerous
 - Ask: whether a reasonable person in A's position would have realised that he/she was exposing others to an appreciable risk of serious injury: majority in **Wilson** (1992); confirmed in **Lavender** (2005) [A drove an operator of loader at sand mine to chase the boys away but ran over the deceased]
- **Dangerous does not mean unlawfulness:**
 - **Burns**(2012) [The supply of prohibited drugs methadone was not of itself dangerous (any danger lies in consumption); may be unlawful but need more to make it dangerous]
 - Eg. could supplying a syringe with an overdose of the drug be dangerous?
- It was a question for the jury as to whether A's act conduct was objectively threatening on the evidence: **Rik** [2004] [V was threatened and then jumped to tracks and made his way towards another platform]
- Risk of serious injury required: more than trivial or negligible injury (**Wilson**); psychiatric harm may not be sufficient: **R v Dawson** (1985)

The reasonable person

The reasonable person in A's position

- includes:
 - physical features of the situation and the action of A: **Rik** [2004], **Wills** [1983]
 - facts known to A: **Lavender** (2005)
 - specialist knowledge may be relevant: **Wills**
- Does not include:
 - 'anything personal' to A that may affect A's judgement as to whether the act is dangerous or A's judgement on the question of whether the act is dangerous or not: **Wills** [1983] Fullager J, 214
 - A's opinion: **Lavender** (2005)
 - Idiosyncrasies of A or ephemeral emotional or mental state of A; alcohol/ drug consumption: **Wills** [1983] Lush J, 212

Causing death:

Causation issue as per above for murder.

2) Mental element:

- A's intent to do the unlawful and dangerous act (the only requirement)
- P must prove all PE + ME elements of the base unlawful offence and dangerous offence: **Newberry**; **Lamb**.

3.2 Manslaughter by criminal negligence

- **Definition per Nydam:**

The act which caused the death was done by the accused **consciously and voluntarily**, without any intention of causing death or grievous bodily harm but in circumstance which **involved such a great falling short of the standard of care which a reasonable man** would have exercised and **which involved such a high risk that death or GBH would follow that the doing of the act merited criminal punishment.**

 - A killing that occurs through a very high or gross degree of negligence, compared with the standard in unlawful act
- **P must prove**
 - 1) **A committed an act/omission to do an act (with intention) that caused the death**
 - A must do this with intention
 - Causation issues as per Murder
 - 2) **A's act/ omission was in breach of a duty of care**
 - In relation to 'acts' there is a general common law duty not to cause harm to others (implicit in **Nydam**) but issue arises largely in relation to omissions
 - A person has no criminal responsibility for negligent conduct (omissions) unless that conduct involves a duty of care owed to others: **Burns** (2012)
What duty is owed?
 - no duty to save a drowning stranger (may be moral but not

legal obligation)

- Omission only sufficient if A under **legal duty** to act (ie to not fail to act)
- Dependent family relationship (parent/child): **R v Russell** (1933)
- Creation of hazardous situation: **R v Miller** (1983)
- Voluntary assumption of duty for person who cannot care for self:
Stone and Dobinson (1977)[deaf& blind appellant knowing the poor condition of V but fail to care, causing death];
seclusion **Taktak** (1988) [the prostitute was overdosed and died later due to A assumed his duty of care by taking her from the street to a house, thereby isolating her from assistance]
- Duty imposed by statute or contract e.g. s44 Crimes Act 1900
- BUT NOT the relationship between supplier of prohibited drugs and recipient **Burns** (2012)

3) A's act/ omission amounted to criminal negligence & merited criminal punishment ---a criminal degree of negligence

1. involved a great falling short of the standard of care which a reasonable person would have exercised in the circumstances; and
2. involved such a high risk that death or really serious bodily harm would follow as a result of the act/omission **Nydam** [1977][A came to a barbershop with a bucket containing petrol, he lit up a cigarette lighter, causing explosion];
Lavender [2004] [drove a truck towards boys]
 - Test higher than civil liability; very high degree of negligence required: **Andrews** [1937]
 - More than 'mere' negligence or 'mere inadvertence'; might be understood to be '**wicked**' negligence: **Taktak** (1988); approved in **Lavender**
 - **Objective test: what a reasonable person** is in the position of A would realise?
 - Includes facts and circumstances known to A: **Lavender** (2005)
 - BUT does NOT include: A's opinion that it was safe to act as he/she did: **Lavender** (2005); A's personal beliefs, views or attitudes: **R v Sam** [2009]
 - A's personal attributes? Although trial judge in **Lavender** included age, experience and knowledge in A's attributes, HC more guarded about this extent to which A's knowledge should be attributed— eg. did not comment on age and experience

Temporal coincidence: **Le Brun** [D knocked his wife unconscious and tried to drag her into their house. Her head struck the pavement killing her. Guilty of manslaughter because it was a continuous course of unlawful act]