

## **HC 7, 11-01-2018, Common Law**

### **Involuntary manslaughter**

The second variation of involuntary manslaughter is manslaughter by gross negligence. The actus reus requirements are:

- A duty of care (a relationship with the victim).
- That duty is breached.
- As a result death occurred.

The mens rea requirement is 'such disregard for the life of others as to amount to a crime'. In *R. v. Adomako - oxygen tube*, he failed to recognize that the oxygen tube of the patient was disconnected. Gross negligence only occurs with involuntary manslaughter, and this is mostly applied in the medical sphere, sometimes in traffic accidents. A very high form of negligence is required.

### **Dangerous driving**

The last variation of homicide is a statutory offense called dangerous driving. It is in the Road Traffic Act 1991. Most of the requirements are objective. The actus reus requirements are:

- Driving far below normal standard, very carelessly.
- Death has occurred.
- There had to be a risk of physical injury.

There is hardly any mens rea requirement, it is some kind of an absolute offense. It includes the state of the vehicle, but only if you knew about the fault in your car and still drove with it (*R. v. Skelton, handbrake*). The same goes for the state of the driver. If you know you have an illness which might be dangerous and you still drive you can be held responsible if you cause an accident.

### **Violent offences which are not fatal**

#### **Threat to apply force**

This is an offence under common law. The threat to apply force. The actus reus is that he has to use words or acts that can be taken as a threat, and it is necessary that those words were apprehended, understood, as a threat by the victim.

#### **Stalking**

Another example is stalking. The mens rea requirement is basic intent, the actual intention or Cunningham recklessness. This means actually foreseeing the risk that the victim might apprehend your words as a threat. This is the minimum.

#### **Application of force**

The next offence is the application of force. The actus reus is that there needs to be unlawful touching of another person's body. The mens rea requirement is the same, basic intent.

#### **Malicious wounding**

There are also statutory offences which are not fatal. The first one is malicious wounding. The actus reus requirements are:

- Unlawful
- Wounding (breaking of the skin, blood, or inflicting GBH; grievous bodily harm).

The mens rea requirement is: malicious. Malicious in this context means Cunningham recklessness. Basic intent is enough. The basic intent has to be directed at the result, at the bodily harm. This was decided in *R. v. Parmenter, injuring baby*, where Parmenter had to actually foresee some physical harm. Parmenter had a baby and couldn't deal with the noise so he shook the baby a lot and thereby

injured it. He said he didn't know he could hurt the baby by shaking it. It was accepted in this case that it had to be proven that he foresaw physical harm, which for Parmenter couldn't be proven.

### **Assault occasioning bodily harm**

The subsequent of malicious wounding is assault occasioning bodily harm. Here the actus reus is assault or battery, and some sort of injury. The mens rea is Cunningham recklessness directed at the assault, not at the result/injury (which was indeed the case in *R. v. Parmenter, injuring baby*). The fact that the recklessness only has to be directed at the assault is the main difference with malicious wounding, where the recklessness has to be directed at the injuries.

### **Theft**

Another statutory offense is theft. The actus reus is that there has to be a situation of appropriation of property. You have to somehow start acting as the owner of the property. This can be for example if you sell the object. This was the case in *R. v. Pitham & Hehl*. They were staying in someone else's house and started selling the furniture. Another example is changing labels in a supermarket. If you put another price-tag on the item than you are acting as if you were the owner. This was the case in *R. v. Morris, supermarket*. When you change the labels you are already interfering with the rights of the owner.

Later assumption is if you start doing these actions later on. Later assumption can also qualify as assumption. In the case mentioned above, the guys had been staying in the house for a while and later on started selling the furniture. This is an example of later assumption. Another case on this is *Anderton v. Burnside*. Property here can be real or intangible (credit). This includes money and overbilling (charging too much).. Electricity or information are not considered to be property.

You can steal someone else's property, but you can also steal your own. For example when you take your car to be repaired and then take it back without paying for the reparations (*R. v. Turner, car to garage*). The garage had a right to that car. The mens rea requirement is the intention to permanently deprive (*Easom, cinema*). The second mens rea requirement is that the action has to be dishonest. If you believe you have the right to take an item, that will not be dishonest. This is the same if you believe the owner would consent, then you cannot be convicted for theft. But if there is no indication someone would want to sell his item, taking it might still be considered as theft.

### **General defenses**

Partial defenses are only available for murder charges. General defenses are available for almost all possible charges. There are seven different general defenses:

#### **Minors**

If you are under 10 years old you are not liable. This is irrebuttable. You can never convict anyone who is not 10 years old. Between 10 and 14 years old you are in principle fully responsible, but:

- There needs to be some awareness of committing a crime.
- The case goes to a special youth court.
- The Crown has a discretion to not bring the case and to not prosecute.

#### **Insanity**

The rules are described in the *R. v. M'Naghten* case. The requirements are:

- A disease of mind: any disease that intervenes with the state of your mind will suffice (*R. v. Kemp, arteriosclerosis* could result in deficiencies of the mind),

- causing a defect of reason: you are unable to distinguish between right and wrong, and have no clue about the moral aspect of your action (*R. v. Clarke, absent mindedness is not enough*, it has to be a serious defect. A woman went shoplifting and she said she was a little absent minded, but this was not allowed as insanity).
- This has to result in the nature of the act to not be appreciated (this is rare), you don't understand what will be the factual consequences of your actions. **Or**, it results in you not understanding that what you did was wrong. You knew you would kill him but did not know that was not allowed. This was the case in *R. v. Windle, hang for it*. He killed his wife while suffering from a mental disease. After he killed her he had said that he would probably hang for it. This took away his chance of being regarded insane, because he showed that he knew his actions were wrong.

There is a presumption of sanity, the burden of proof is on the defense, 'on a balance of probabilities'. Insanity only works when there is a mens rea requirement, which then will not be fulfilled. If there is no mens rea requirement insanity is not available. Diminished responsibility is wider in the sense that the requirement is that you cannot control your actions, but you do understand what you're doing. If you are insane you cannot be punished, you will probably just be sent to a mental hospital. Diminished responsibility only leads to reduced verdict, not to the absence of punishment (which insanity does).

### **Automatism**

It was not a voluntary act, it was involuntary (*Hill v. Baxter*). It was either by instinct or by a physical disease. If it is self-induced it will not be accepted (*R. v. Lipman, snakes*, Lipman took drugs, and due to those he thought he was being attacked by snakes and killed his friend, but this was not accepted because it was self-induced).

### **Duress**

This is close to necessity, it means that your will is overpowered by a threat. You only want to do it because of the threat. The first requirement is that there needs to be a serious threat of death or injury. A threat to your property is not enough. The threat does not have to be real necessarily, you can apprehend something as a threat, as was the case in *R. v. Cairns, victim on bonnet*. He felt like he was threatened but the threat was a lie. That didn't matter. The second requirement is that your response has to be reasonable (objective requirement; what would be reasonable for an ordinary person) and operative at the time of the crime. If the threat has gone the duress is not available anymore either (*R. v. Hudson, perjury*).

Very important is that voluntary exposure to threats is not a defense (*R. v. Sharp, robbery by gang*). Duress and necessity are not available against murder (*R. v. Gotts, ordered by father*). To attempt to kill someone cannot be excused by the fact that someone else told you to do so.

### **Necessity**

There was pressure on the defendant's will, either by threat or objective danger. This is no defence for (attempted) murder (*R. v. Dudley and Stephens, shipwrecked*). It is a principle under English law that you can never take the life of someone else to save your own.

### **Self-defense**

Reasonable force in your own defense. The first requirement is that there needs to be an imminent attack (or an apprehended one). It has to be reasonable. This again is an objective test. There is no

defense against excessive force in self-defense (*R. v. Clegg, firing at a stolen car*). If there is excessive force can it be reduced to manslaughter? Only if it was actually provoked, it was a proportionate reaction and loss of self control is required as well. The House of Lords has wanted to introduce a new defense here, but they said that they cannot invent a partial defence because that is a job for the parliament. This is because partial defenses are statutory.

### **Mistake**

This means that you for example misjudged a situation. In *R. v. Gladstone Williams, mugging or arresting* he thought he was interfering in a fight, but it was a police officer trying to arrest someone. Mistake can negate mens rea, for example Cunningham recklessness. Or it can negate actus reus, for example: 'unlawful' (*R. v. Beckford, not armed*).

In principle you can only be held responsible for a positive act. But there is an exception if there is a special relationship, for example if you said you would look after children. The case and answers of the school outing are on the slides.

### **Trial by jury**

The jury system has gone from witnesses of fact to judges of fact. Juries have been in decline since the 19th century. In the US this is not the case because juries are in the constitution. A court official decides if an indictment is necessary. Only those offenses are brought before a jury. In addition there are limitations in the Criminal Justice Act. The intent here is to limit situations in which a jury is necessary. The defendant might not want a jury, maybe for reasons of publicity. Or the prosecutor might not 'want' a jury if the case is way too complex or lengthy, or if it is too risky (jury tampering). A criminal might have friends who can threaten the jury. But it is the judge who decides. The jury consists of 12 randomly chosen persons from the public.

One of the characteristics of trial by jury is that there is a single oral hearing. Witnesses must be present, there are no written statements and everything is oral. Also hearsay evidence is inadmissible. Trial by jury is accusatorial. Examination-in-chief of the witnesses is not done by the judge but by the parties. The prosecution starts with questioning and cross-examination. The role of the judge is limited. The judge can instruct the jury, but the jury is not obliged to follow those instructions (jury annulment, *Aircraft for Indonesia*).

Another characteristic is the separation of verdict and sentence. The jury just has to say guilty or not guilty, they rule. The verdict is what the jury says about the facts, and the sentence is the penalty the judge gives. The verdict is decided by majority. An alternative verdict is applied when the jury says he has not done A, but they still declare him guilty of B.