FACULTE DE DROIT ET DE SCIENCE POLITIQUE

DEPARTEMENT DE LANGUES JURIDIQUES

ENGLISH: CRIMINAL LAW

CASEBOOK & EXERCISES

LICENCE 2 - DROIT

CONTENTS

ROLE DUTIES

In order of appearance during the moot[1] presentation

JUDGE

- Introduce the case (parties, court, judge, procedural posture[2], date)
- Define the relevant vocabulary (explain in English/translate into French if necessary)
- Define the problem(s) that the court is going to solve (the issue) « whether…when »
- Take notes and ask the speakers questions to make sure that their arguments are clear to the jury (the class)
- Give the court's conclusion and pronounce judgement.

LEAD COUNSEL[3] FOR THE PROSECUTION[4]

- Introduce him/herself and the three other speakers
- Present the facts of the case from your client's point of view
- Give the court the rules of law, including case citations and other legal references
- After the Assistant Counsel for the defence has finished demand judgment for your client.

ASSISTANT COUNSEL FOR THE PROSECUTION

- Make arguments for your client using the rules of law introduced by the Lead Counsel
- If the rules of law are not in favour of your client, distinguish the facts of your case from the case rules cited.

LEAD COUNSEL FOR THE DEFENDANT

- Present the facts of the case from your client's point of view
- Give the court the rules of law, including case citations and other legal references
- After the Assistant Counsel for defendant has finished demand judgment for your client.

ASSISTANT COUNSEL FOR THE DEFENDANT

- Make arguments for your client using the rules of law introduced by the Lead Counsel
- If the rules of law are not in favour of your client, distinguish the facts of your case from the case rules cited.

JURY (the class)

- Ask the judge questions to clarify the court's analysis of the facts and laws
- Ask the attorneys (counsels) questions related to their arguments, the facts, the rules of law
- Vote on the winning party - be prepared to justify your vote.

WITNESSES (optional extra roles)

- Create a role for a person likely to have important, relevant knowledge of the crime
- Can be called to the stand to testify for either party
- Should be sworn in before they testify : « I promise to tell the truth, the whole truth and nothing but the truth (so help me God) »

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[1] A moot is an argument on points of law which aims to simulate, as far as possible, an authentic court hearing before a judge. A successful mooter is one who manages to persuade the judge of the superiority of his or her legal arguments.

[2] Which court the case started in and the path it took through appeals to get to the current court.

[3] A barrister or other legal adviser conducting a case: *the counsel for the defence*

[4] In criminal law the prosecution is usually the state or state representative : *Director of Public Prosecutions, Regina (The Queen), People …* The prosecution is the first name given in the case.

GENERAL PRESENTATION TIPS AND USE OF LANGUAGE IN COURT

1. **Do not read your speech,** it is boring and prevents you from making eye contact with the other participants. You may use detailed notes of the case to help you remember points for your presentation but you must keep them on the table (use large print and wide spacing to make visible). **Reading = a mark under 10/20**
2. **Put your presentation in your own words** to demonstrate your understanding of the case. The only exception is for rules of law which may be read word for word.
3. **Practice your pronunciation and intonation.** Bad pronunciation prevents others from understanding what you are saying. Flat intonation makes you sound uninteresting. Use the audio tools provided with online dictionaries and translators. Practice with your team-mates, film yourselves! If you know any native English speakers, ask them to listen to you. **Bad pronunciation indicates lack of preparation and will mean lower marks.**
4. **Use your legal English.** When the judge/jury asks you questions about your case, use a legal English answer. If you've read and understood your case very well, many of the terms you can use are in it.
5. **Stand when addressing the jury or the judge.** The judge, on the other hand, should sit.
6. **Use the correct form of address when speaking to the judge.** The first speaker in the moot must introduce himself or herself and the three other speakers, and should say, "May it please your lordship, I am [Caroline Whitmore] and I appear in this matter on behalf of the [appellant], together with my learned friend [Miss Sally Webb], and the [respondent] is represented by my learned friends [Mr William Postgate] and [Miss Mary White]." Always end your submission by asking the judge if there are any questions to be asked by saying, "Unless I can help your lordship any further...", wait to see if you can, then thank the judge and sit down.
   Address the judge directly as "My Lord/Lady" and indirectly as "Your Lordship/Ladyship". When agreeing or disagreeing with the judge always do so "with respect...". If the judge directs you to address a particular point, say, "If your Lordship/Ladyship pleases".
   Refer to other speakers as "My learned friend" or "My learned junior/leader".
7. **Avoid using language which expresses doubt.** In court an advocate will never say "I think..." or "In my opinion..." in the presentation of their arguments; the correct form is that which connotes the advancement of opposing ideas, such as "I submit..." or "It is my submission that..." or even "I suggest...".
8. **Use eye contact and good posture to maintain the attention of your audience** (the judge, the jury/class, your opponents), do not lean on the desk, walk up and down etc.

A successful mooter will

- be familiar with the facts of the case but not speculate
- offer well-structured, clear arguments without reading from a script
- refer to case law to support his/her arguments but will avoid lengthy quotations
- be able to spontaneously discuss the strengths and weaknesses of the argument with the judge and to answer questions from the jury.

Director of Public Prosecutions v Morgan
[1975] 2 W.L.R. 913

House of Lords
Lord Cross of Chelsea, Lord Hailsham of St. Marylebone, Lord Simon of Glaisdale, Lord Edmund-Davies and Lord Fraser of Tullybelton
Lord Widgery C.J., Bridge and May JJ.
January 28, 29, 30, February 3, 4 and April 30, 1975

Introduction
Director of Public Prosecutions v Morgan [1975] 2 W.L.R. 913 is an English House of Lords case which held that an honest belief by a man that a woman was consenting to sexual intercourse was a defence to the crime of rape, regardless of whether such belief was deemed to be reasonable.

Summary of Facts
The defendant M invited the other three defendants, much younger men, to his house and suggested that they should have intercourse with his wife, telling them that she was 'kinky' and any apparent resistance on her part would be a mere pretence. Accordingly they did have intercourse with her despite her struggles and protests. She ended up having to have hospital treatment for her injuries.

They were subsequently charged with rape and also, together with M, with aiding and abetting rape. The wife gave evidence that she resisted and did not consent. The three young defendants in their evidence said that they had believed what M had told them, that the wife had resisted at first but had later actively co-operated in the acts of intercourse.

Court of Appeal

McDonald, McLarty and Parker appealed on the ground, inter alia, that the jury had been misdirected by the indication that the Crown could establish the necessary mens rea for rape by satisfying the jury that a defendant's belief in consent by the woman, although honestly held, was not based on reasonable grounds. Morgan also appealed.

The Court dismissed the appeals, although the Court certified that a point of law of general public importance arose, namely

“whether in rape the defendant can properly be convicted notwithstanding that he in fact believed that the woman consented if such belief was not based on reasonable grounds,”

Consequently, leave was given to appeal to the House of Lords.

House of Lords

The arguments on both sides are summarised in the speech of Lord Cross of Chelsea.
The facts of the case are set out in the speeches of Lord Hailsham of St Marylebone and Lord Edmund Davies.

Lord Cross of Chelsea

The question of law which is raised by the appeal is whether the judge was right in telling the jury that, if they came to the conclusion that Mrs. Morgan had not consented to the intercourse in question but that the defendants believed or may have believed that she was consenting to it, they must nevertheless find the defendants guilty of rape if they were satisfied that they had no reasonable grounds for so believing.

If the direction given by the judge was wrong in law, the further question arises whether the case is one in which the conviction should stand notwithstanding the misdirection by virtue of the proviso to **section 2 (1) of the Criminal Appeal Act 1968**. The Sexual Offences Act 1956, which provides by section 1 (1) that it is an offence “for a man to rape a woman,” contains no definition of the word “rape.” No one suggests that rape is an “absolute” offence to the commission of which the state of mind of the defendant with regard to the woman's consent is wholly irrelevant.

The point in dispute is as to the quality of belief which entitles the defendant to be acquitted and as to the “evidential” burden of proof with regard to it.

Defence Summary

The submissions of counsel for the appellants can be summarised as follows: “When it is said—as it was for example by Stephen J. in Tolson (1889) 23 Q.B.D. 168, 185—that the mental element in rape is an intention to have intercourse without the woman's consent, that means not simply an intention to have intercourse with a woman who is not in fact consenting to it but an intention to have non-consensual intercourse, not, of course, in the sense that it must be shown that the defendant would have been unwilling to have had intercourse with the woman if he had thought that she was consenting to it, but in the sense that he was either aware that she was not consenting or did not care whether or not she consented.

That does not mean that the Crown is obliged to adduce positive evidence as to the defendant's state of mind. If it adduces evidence to show that intercourse took place and that the woman did not consent to it, then in the absence of any evidence from the defendant the jury will certainly draw the inference that he was aware that she was not consenting.

So as a practical matter he is bound—if he wishes to raise the point—to give evidence to the effect that he believed that she was consenting and as to his reasons for that belief; and the weaker those reasons are the more likely the jury is to conclude that he had no such belief. But the issue as to the accused's belief in the woman's consent is before the jury from the beginning, and is an issue in respect of

which the evidential burden is on the Crown from first to last. There is never any question of any evidential burden with regard to it being on the accused or of the judge withdrawing it from the jury."

Prosecution Summary

The submissions of counsel for the Director can be summarised as follows: "When it is said that the mens rea in rape means an intention to have intercourse without consent, that means no more than that the intercourse must be intentional. Rape is in fact analogous to bigamy where the offence is defined as going through a ceremony of marriage when you are in fact married to someone else.

But though the Crown discharges the evidential burden which is on it when it adduces, in a case of rape, evidence of intercourse and lack of consent, or, in a case of bigamy, evidence of marriage during the subsistence of an earlier marriage, Tolson (supra) shows that it is open to the defendant on general principles of criminal liability, not in any way confined to rape or bigamy, to raise the defence that he had reasonable grounds for believing that the woman was consenting or that his earlier marriage was no longer subsisting, as the case may be.

If he raises such a defence, then since the evidential burden of establishing it is on him the judge must rule whether the evidence of belief on reasonable grounds is sufficient to justify the defence being put to the jury. If he rules that it is then the onus is on the Crown to satisfy the jury that the defendant in fact either had no such belief or had no reasonable grounds for entertaining it."

Lord Hailsham of St Marylebone

In their evidence in Court, the appellants admitted that some degree of struggle took place in the bedroom, that Mrs. Morgan made some noise which was forcibly suppressed, and that she was carried forcibly into the other bedroom, and that her arms and legs were separately held. In addition to this, Mrs. Morgan's evidence was far more fully corroborated by a number of statements (each, of course, admissible only against the maker)
which virtually repeated Mrs. Morgan's own story but in far greater and more lurid detail.

Of course, the appellants repudiated their statements in the witness-box, saying that the words were put into their mouths by the police, even though at least one was written out in the hands of the maker of the statement.

I think it likely to the extent of moral certainty that the jury accepted that these statements were made as alleged and contained the truth. But I need not rest my opinion upon this, since the undeniable fact is that the jury accepted.

After an impeccable summing-up and adequate corroboration, that Mrs. Morgan was telling the truth in her evidence. I mention all these details simply to show, that if**, as I think plain,** the jury accepted Mrs. Morgan's statement ***in substance*** **there was no possibility whatever** of any of the appellants holding any belief whatever, reasonable or otherwise, in their victim's consent to what was being done.

As the judge's summing-up, so far as relevant to this point, was wholly impeccable, and as the jury obviously accepted the victim's story in its substance there is in my view no conceivable way in which a miscarriage of justice can have taken place and therefore no possibility of quashing these convictions, even though, the substantial question of principle should be answered in favour of the appellants' contention.

Judgement of the Court

(1) (Lord Simon of Glaisdale and Lord Edmund-Davies dissenting) that when a defendant had had sexual intercourse with a woman without her consent, genuinely believing nevertheless that she did consent, he was not to be convicted of rape, even though the jury were satisfied that he had no reasonable grounds for so believing and, accordingly, the trial judge had misdirected the jury Reg. v. Tolson (1889) 23 Q.B.D. 168 distinguished .

(2) Dismissing the appeals, that nevertheless in the present case the proviso to section 2 (1) of the Criminal Appeal Act 1968 should be applied, since it was clear that the jury rejected the defendants' allegations of the wife's co-operation, a version diametrically opposed to hers, and would not have returned a different verdict even if they had been properly directed by the judge

Lord Cross of Chelsea.- A man who has intercourse with a woman, believing on inadequate grounds that she is consenting to it, does not commit rape in ordinary parlance or in law (post, p. 203F).

Lord Hailsham of St. Marylebone. - In rape the prohibited act is intercourse without the consent of the victim and the mental element lies in the intention to commit the act willy-nilly or not caring whether the victim consents or not. A failure to prove this element involves an acquittal, because an essential ingredient is lacking and it matters not that it is lacking because of a belief not based on reasonable grounds (post, p. 215C-D).

Per Lord Fraser of Tullybelton.- If the effect of the evidence as a whole is that the defendant believed or may have believed that the victim was consenting, the prosecution has not discharged the onus of proving commission of the offence and no question can arise as to whether the belief was reasonable or not, though the reasonableness or otherwise of the belief is important as evidence tending to show whether the belief was truly held.

Decision of the Court of Appeal (Criminal Division), is thus upheld for different reasons.

[The full case is available on the ENT.]

Vocabulary

Rape
Conviction
Consent
Absolute offence
The Crown

H.M. Advocate v Rutherford (John)

1947 S.L.T. 3

High Court of Justiciary
Lord Justice Clerk Cooper
04 October 1946

Introduction

H.M. Advocate v Rutherford 1947 S.L.T. 3 is a Scottish criminal case where a man was charged with the murder of a woman. During the trial he argued that her actions were partly consensual despite the general rule in criminal law that a person cannot consent to harm being done to them (with some exceptions).

Summary of Facts

In this case, at the trial of a man on a charge of murdering a woman by strangling the accused stated in evidence that the woman, who had repeatedly asked him to strangle her to death, put his necktie round her neck, and that he had pulled it and pulled it again on her telling him to get on with it. On discovering that she was dead he reported the matter to the police.

He had, he stated, no intention of doing her harm, and wished only to humour and frighten her. In cross-examination he admitted that the pull he exercised must have been a strong one, the necktie having been broken, and he also admitted knowing that such action involved a good chance of choking the victim to death. Medical evidence established the existence not only of marks on the woman's neck made by the tie but also of marks made by the hands consistent with manual strangling. Evidence was led of at least one attempt by the woman in the past to commit suicide.

In his charge the Lord Justice-Clerk directed the jury:—

(1) That upon no view of the evidence could they acquit the accused on the ground that the case was one of casual homicide due to misadventure or accident;

(2) that, if life is taken in circumstances which would otherwise imply the guilt of murder, the crime does not cease to be murder merely because the victim has consented, or even has urged the commission of the deed;

(3) that, where violence is used and results in fatal consequences, the crime cannot be merely the crime of assault;

(4) that the essence of murder is that the accused should have acted deliberately with intent to kill, or at least with reckless indifference as to the consequences of his violence upon his victim; and

(5) that in the present case their verdict must be one of culpable homicide unless it was established to their satisfaction beyond reasonable doubt that the accused, when compressing the woman's throat, was acting with the intent above defined.

The accused pleaded not guilty.

The evidence led at the trial was to the following effect. At a, quarter to two on the morning of 16th July 1946 the accused entered the Central Police Office, Edinburgh, and asked the officer in charge if he would send an ambulance to St Margaret's Loch, where he had strangled a girl. He produced part of a necktie and said that the other part was under the body. The body was found at the place he had indicated.

The medical evidence showed that death was due to strangulation, and that severe pressure must have been used and persisted in for some time. There were linear bands of discoloration round the neck and abrasions on the skin in the region where apparently the tie had been tightened. There were also marks of bruising under or behind the jaw on both sides of the neck, under the sterno-mastoid muscles and the tissues of the larynx, pointing in the opinion of medical experts to manual pressure of a throttling nature.

In defence it was admitted that death was due to strangulation caused by the accused, but he gave evidence to the effect that **the woman repeatedly asked and pestered him to strangle her to death,** and that she put his necktie round her neck**; that he had no intention of doing her harm**, and only did what he did in order to humour her, meaning only to frighten her. He admitted, however, that he had used considerable force or “some pull,” that he had renewed the pull at her request, that there was a “pretty good chance” of choking the life out of her and that eventually, if he kept pulling a tie round a person's neck for a long enough period, he would eventually strangle that person. He denied having laid his hands on her to strangle her, but admitted that they might have come in contact with her neck. There was also evidence of attempts at suicide upon the part of the deceased, one apparently genuine, others in the nature of play-acting.

Lord Justice-Clerk (Cooper)—

[In the course of his charge to the jury]—Ladies and gentlemen of the jury, both learned counsel began by saying that this case was unique.

In the first place, not only has nearly every critical fact in the Crown's story been established by evidence which was hardly challenged by cross-examination, but in substance the case for the Crown has been admitted by the accused in the witness-box to be a true and accurate story. You are the masters of the facts; but in all I am going to say to you I am going to assume that you accept it as abundantly established, if not admitted, that about one o'clock on the morning of 16th July last, at or near that boat-house at St Margaret's Loch, the accused, Rutherford, strangled this woman and left her dead upon the staging. If that is your view, ladies and gentlemen—and frankly I do not see what other view is possible—the question is not the question customary in trials of this kind, of whether the accused did this dreadful thing, but what crime, if any, he committed by doing it.

One word by way of digression. In the latter part of the address which he has just delivered, Mr Milligan threw out the suggestion that this woman Paton was of an emotional and excitable nature, and might die very quickly or very easily. That is a factor which will arise at a later stage in our consideration of the matter; but I wish to guard against any misapprehension on your part by telling you now with emphasis that it is no answer for an assailant who causes death by violence to say that his victim had a weak heart or was

excitable or emotional, or anything of that kind. He must take his victim as he finds her. It is just as criminal to kill an invalid as it is to kill a hale and hearty man in the prime of life. That by way of digression, because it was referred to in the concluding part of the argument to which you have just listened.

Now, if, as I am assuming, these broad, stark facts which I have just summarised are proved, and if there were nothing more to be said in the case, then unquestionably there is no escape from a verdict of murder. But, of course, a great deal more has been said; and what has been said centres primarily, if not entirely, upon the accused's own story as told to us in the witness-box. What was that story? I think I am summarising it accurately and almost in his own words if I put it thus: “She asked me to strangle her to death. She asked me more than once.” As Mr Milligan said, rightly enough, “she pestered me. She put my tie round her neck. I pulled it. She asked me to get on with it. I pulled it again. I had no intention of doing her harm. I only did it to humour her. I only meant to frighten her.” That, in brief summary, is the very remarkable, and, I think, unprecedented, story which was put forward, and we have got to consider two things. In the first place—a question for you—whether that defence is to be accepted, and, in the second place—partly for myself and partly for you—what would be the effect of its acceptance or its rejection?

Let me consider very briefly, because learned counsel have devoted much attention to it, the first point. Can you take this story off his hands? Is it true in whole or in part? Because I do not shrink from emphasising to you that you are not bound to look at the matter as if it were a question of accepting the whole story or nothing. Parts of it may be true, parts of it may be understated or overstated; but the broad question is—Is this in substance a true story, or is it an afterthought invented to save the accused from an obviously desperate situation? [His Lordship reviewed the evidence which told in favour of or against the acceptance of the accused's explanation of the occurrence, referring, *inter alia*, to the nature of the considerable injuries to the woman's throat, the indications both of strangulation by a ligature and also of manual throttling, her peculiar character, and evidence of certain attempts at suicide upon her part, one of them apparently genuine, others in the nature of play-acting for effect.

Well, there the matter stands. You will consider the story as told by the accused both as a whole and in its separate parts, whether it is to be accepted in whole or in part. It is a possible view, and it is a view which I think you must take into account, that the episode at the boat-house began with requests by the woman to implement this alleged promise in writing, by requests to the accused to strangle her—possibly to strangle her to death—and that it may later have changed its character, he may have lost his head or his temper or something of that kind. That is a possible view of the occurrence; but the broad question with which I am concerned is—are you prepared to accept the story or not? If you reject the story outright as an invention, and are therefore left with the facts in all their naked ugliness, then I have to tell you that your plain duty is to return a verdict of guilty of murder. But if you accept the story as substantially true in whole or in part, what then?

That brings me to a consideration of certain of the legal questions on which I have been asked to give you directions, and let me tell you, ladies and gentlemen, it is not very easy in short space to cover accurately the propositions in law which rule a case so remarkable as this. Will you therefore give me your close attention for a few minutes longer. The first thing I

would say to you is this—rejecting one of the propositions that Mr Milligan asked me to pronounce—the first direction is this, that, even if you accepted the defence on its face value, there is no material before you in this case which would entitle you to treat the accused as guiltless and to acquit him, and I will tell you why. Mr Milligan said that this is a case to be accounted for as a mere accident, a pure misadventure, what is called in our law casual homicide. Now, casual homicide is a well-recognised category in the criminal law of Scotland, as in other countries, and I am going to read you a short passage from an authoritative work which explains what it is, and when I read it you will see why I decline this direction. The passage is this,

“It is casual homicide where a person kills unintentionally, when lawfully employed, and neither meaning harm to anyone, nor having failed in the due degree of care and circumspection for preventing mischief to his neighbour.”
therefore no question of acquitting the accused altogether on that ground can arise.

So much for that. The next point which I have to direct you upon is this—it is a point the Solicitor-General raised, and the direction he asked was that anyone who wilfully kills another person at the latter's request or command is guilty of murder. That, in my opinion, is sound law, and I so direct you; but I would rather put it more specifically with reference to this case in this form, that, if life is taken under circumstances which would otherwise infer guilt of murder, the crime does not cease to be murder merely because the victim consented to be murdered, or even urged the assailant to strike the fatal blow.

To put the matter in popular terms; if there was nothing in this case except the woman's request, and you held that proved, that would not suffice to take the edge off the guilt which otherwise attaches to the assailant. The attitude of the victim is irrelevant. What matters is the intent of the assailant. I think you will see, ladies and gentlemen, that it must be so. It would be a most perilous doctrine to introduce into the law of Scotland, or of any civilised country, that any person was entitled to kill any other person at that other person's request.

But, ladies and gentlemen, that is not the end of the matter. There still remains the issue which is, I think, the one to which your attention must be directed—whether there is enough in the evidence in this case to warrant you in finding the accused guilty not of murder but of the lesser crime of culpable homicide. Here again I must refuse one of the directions that Mr Milligan asked me to give. This is not on any view a case of simple assault. Where violence is used, as admittedly it was used in this case, and it results in fatal consequences, that is not by the law of Scotland assault. It is culpable homicide. And the question to which I now direct your attention is the question of the choice between a verdict of guilty of murder and a verdict of guilty of culpable homicide. That choice depends entirely upon the quality of the criminal intent which, in your view, inspired the assailant, Rutherford. Notice I say “intent,” not “motive.” The Crown is not obliged in any case of this kind to establish the motive with which the crime is committed. What the law looks for is, not the motive at the back of a man's mind, but the intention, the intent with which he acts; and of course it is just there that the difficulty arises, because no one can see inside any person's mind, and intent must always be a matter of inference—inference mainly from what the person does, but partly also from the whole surrounding circumstances of the case. Now, note this—and note this particularly—the essence of murder is that the accused should have acted deliberately with intent to kill, or at least with reckless indifference as to the consequences of his violence upon his victim. I will

say that again, “intent to kill or at least with reckless indifference as to the consequences of his violence upon his victim.” These words have been used again and again, and no better formulation is known to me. It is not necessary that the murder should be premeditated, and, as I have said, motive need not be proved. But, unless it is established to your satisfaction beyond reasonable, doubt that Rutherford when compressing this woman's throat was, acting with the intent which I have defined, his crime is not murder, and your verdict ought to be one of culpable homicide. If, on the other hand, on the best survey you are able to form of the whole of the evidence in this strange and dramatic case, you feel that the just and proper conclusion is that the intent was a murderous intent, then your duty, under your sworn oath as jurors, is plain. Let me consider the choice for a few moments. [His Lordship referred to certain considerations which might influence their decision upon this matter]—

Now, ladies and gentlemen, the position, as I see it, is this—*prima facie*, and without the explanations afforded by the accused, this is a plain case of murder. But the explanations of the accused may be enough to raise in your minds a reasonable doubt as to whether a murderous intent was present; and reasonable doubt, if it be *reasonable* doubt, is enough, because it is the duty of every jury to give the accused the benefit of a reasonable doubt, provided it is a genuine doubt arising on the evidence and not some fanciful or vague hypothesis. Taking the matter on the footing which I have endeavoured to lay before you, the effective choice which you have now to make is a choice between a verdict of murder or a verdict of guilty of culpable homicide, because, as I have said, if you accept the account of this tragedy which is now to all intents and purposes common ground, there is no material which would justify any jury in returning a verdict of not guilty or not proven.

Verdict

The Jury returned a unanimous verdict of guilty of culpable homicide, and the Lord Justice-Clerk sentenced the panel to seven years' penal servitude.
[The full case is available on the ENT.]

Vocabulary

Strangulation
Culpable homicide
Verdict of not proven
Criminal intent
Actus reus

Oxford v Moss

(1979) 68 Cr. App. R. 183

[Divisional Court]

The Lord Chief Justice, Mr Justice Wiennad, Mr Justice Smith

October 19, 1978

Introduction

Oxford v Moss (1979) 68 Cr. App. R. 183 is a case from the English criminal law system. In this case it was held that information could not be classed as intangible property and therefore it was not possible to “steal” it under the definition provided by Section 1 of the Theft Act 1968.

Summary of Facts

In May 1976 the defendant was a student at Liverpool University. He was studying engineering. Somehow (and this Court is not concerned precisely how) he was able to acquire the proof of an examination paper for an examination in Civil Engineering to be held in the University during the following month, that is to say June 1976. Without doubt the proof, that is to say the piece of paper, was the property of the University.

It was an agreed fact, as set out in the case, that the respondent at no time intended to steal what is described as "any tangible element" belonging to the paper; that is to say it is conceded that he never intended to steal the paper itself.

He was charged by the university authorities with the theft of confidential information from the senate of the university contrary to **Section 1 of the Theft Act 1968**.

Prosecution

It was contended by the prosecutor that the confidential information namely the meaning of the words printed upon the said proof examination question paper was a form of intangible property as opposed to the paper itself and the characters printed thereon; that the defendant appropriated the said confidential information; that the said appropriation was dishonest; and that the defendant intended permanently to deprive the owner of the said confidential information.

Defence

It was contended by the defendant that the confidential information is not a form of intangible property; that since confidential information is not a form of intangible property it is incapable of being appropriated; that confidence in the context of the present case meant the control of extent of publication of the proof examination question paper which constituted a right over property; and that by the actions of the defendant the owners of the said proof examination question paper had not been permanently deprived of any intangible property.

Judgement

The magistrate was of the opinion that:

(1) On the facts of the present case confidential information was not a form of intangible property as opposed to the property in the proof examination question paper comprising the paper itself and the words printed thereon;

(2) confidence consisted in the right to control the publication of the proof examination question paper and was a right over property other than a form of intangible property;

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(3) by his conduct the defendant had gravely interfered with the owners' right over the said proof examination question paper, but had not permanently deprived the owner of any intangible property, therefore there was no appropriation of “property” within the meaning of section 4 (1) of that Act and accordingly the magistrate dismissed the charge.

- ***Appeal***

The Prosecutor appealed the decision in the case.

Smith J

Smith J gave the leading judgement in the case. He stated that the question for the Court was whether confidential information can amount to property within the meaning of the Theft Act 1968. By **section 1 (1)** of the statute: "A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it ..."

By **section 4 (1):** "'property' includes money and all other property, real or personal, including things in action and other intangible property." The question for this Court is whether confidential information of this sort falls within that definition contained in **section 4 (1)**.

Authorities

The Court was referred to a number of judicial authorities;

- *Peter Pan Manufacturing Corporation v. Corsets Silhouette Ltd*. [1963] 3 All E.R. 402,
- *Seager v. Copydex Ltd*. [1967] 2 All E.R. 415,
- *Argyll v. Argyll* [1965] 2 W.L.R. 790, and
- *Fraser v. Evans* [1968] 3 W.L.R. 1172.

These cases are concerned with the duty to be of good faith. They clearly illustrate the principle that if a person obtains information which is given to him in confidence and then sets out to take an unfair advantage of it, the courts will restrain him by way of an order of injunction or will condemn him in damages if an injunction is found to be inappropriate.

Judgement

However Smith J rejected their applicability to the present case, arguing that they provided little assistance when having to consider whether there is property in the information which is capable of being the subject of a charge of theft.

In his judgement Smith J concludes that there is no property in the information which is capable of being the subject of a charge of theft.

Accordingly he moves to dismiss the appeal.

Wien J

Wien J agreed with Smith J and supported the decision of the stipendiary magistrate on one ground only, that it is shown in this case that the right to confidential

information is not intangible property within the meaning of **section 4 (1) of the Theft Act 1968**.

Once one comes to that conclusion, then it seems to follow, although it is not necessary to decide it in this case, that there was no intention permanently to deprive the owner of it, namely, the so-called intangible property.

The Lord Chief Justice agreed with both judgements and had nothing additional to add.

[The full case is available on the ENT.]

Vocabulary
Intangible property
Tangible property
Appropriation
Theft
Lord Chief Justice

People v Thomas

85 Mich. App. 618 (1978)
272 N.W.2d 157
Michigan Court of Appeals
D. E. HOLBROOK, Jr., Presiding Judge.
Decided September 19, 1978

Introduction
People v Thomas 85 Mich. App. 618 (1978) is an American case from the state of Michigan. In this case, the defendant was charged with second degree murder, and was convicted by a jury of the crime of involuntary manslaughter.

Summary of the Facts
The victim in this case was a 19-year-old male "catatonic schizophrenic". At the time of his death he was a resident at a religious practical training school, Oak Haven. The defendant, who was the work co-ordinator at the school, did not believe the young man was responding to ordinary treatment. Consequently, he sought permission (which was granted) from the victim's parents to discipline him if it seemed appropriate.
The defendant along with another supervisor at the school then took the teenage boy to the edge of the campus. Once there, they took down the victim's pants and spanked him with a **rubber hose**. This lasted for approximately **15 to 30 minutes**. Furthermore, during the disciplinary session, the victim's hands were tied behind his back for failure to comply.
After this the defendant noted that the victim improved for a period of time but later began to "backslide". Once again the work co-ordinator sought permission from the victim's parents to further discipline him.
On the 30th of September, 1976 the defendant once again took the young man to the edge of the campus to the same location as before. However, this time he removed the victim's pants bound his hands behind him with a rope looped over a tree limb and proceeded to beat him **with a doubled-over rubber hose**.

This beating lasted **approximately 45 minutes to an hour.** While the evidence conflicted, it appears that the **victim was struck between 30 to 100 times**. The beating resulted in severe bruises ranging from the victim's waist to his feet. The decedent's roommate testified that the decedent had open bleeding sores on his thighs. On the date of death, which was nine days after the beating, the decedent's legs were immobile. **At no time did the defendant obtain medical attention for the victim.**

The defendant admitted he had exercised poor judgment, after seeing the bruises, in continuing the discipline. He further testified that in the two days following the discipline, the decedent seemed to be suffering from the flu, but by Sunday was up and walking and was in apparent good health until one week following the beating, when the decedent became sick with nausea and an upset stomach. These symptoms continued for two days, when the decedent died.

Medical Opinion

(1) Dr Clark

He testified (after an autopsy) that the bruises were the result of a trauma and that the victim was in a state of continuous traumatisation because he was trying to walk on his injured legs.
Dr Clark further testified that the decedent's legs were **swollen to possibly twice their normal size.** However, he stated that the **actual cause of death was acute pulmonary edima,** resulting from the aspiration of stomach contents. Said aspiration caused a laryngeal spasm, causing the decedent to suffocate on his own vomit.

Although pulmonary edema was the direct cause of death, Dr. Clark testified that **said condition usually had some underlying cause** and that, while there were literally
hundreds of potential underlying causes, it was his opinion that in the instant case **the underlying cause was the trauma to decedent's legs**

In explaining how the trauma ultimately led to the pulmonary edema, Dr. Clark testified that the trauma to the legs produced "crush syndrome" or "blast trauma", also known as "tubular necrosis".

"Crush syndrome" is a condition caused when a part of the body has been compressed for a long period of time and then released. In such cases, there is a tremendous amount of tissue damage to the body part that has been crushed. When the compression is relieved, the tissues begin to return to their normal position, but due to the compression, gaps appear between the layers of tissues, and these areas fill up with blood and other body fluids, causing swelling.

In the present case, Dr. Clark estimated that about 10-15% of the decedent's entire body fluids were contained in the legs, **adding an additional ten pounds in weight to the normal weight of the legs** and swelling them to twice their normal size. This extra blood and body fluid decreased the amount of blood available for circulation in the rest of the body and would cause the person to become weak, faint and pass out if he attempted to sit up or do other activities. The decedent was sitting up when he died. It was Dr. Clark's opinion that the **causal connection between the trauma and death was more than medically probable and that it was "medically likely**".
He further testified he could say with a reasonable degree of medical certainty that the trauma to the legs was the cause of
death.

(2) Agatha Thrash

The defense called a pathologist, Agatha Thrash.

She offered testimony refuting that given by Dr Clark, although **she did admit that pulmonary edima could have been the final cause of death** and that Dr Clark was correct in finding acute tubular necrosis. She ultimately came to the conclusion that the death **was probably caused by "encephalo myocarditis"** which is an acute swelling of the brain and the heart.

Court of Appeals

The defendant raised a number of issues on appeal which were condensed by the court with the most important of the issues being evaluated by the court last.

(1) The appellant claimed that the prosecution failed to establish the malice element of second degree murder.

- **The Court disagreed with this submission** – Malice or intent to kill may be inferred from the acts of the defendant. In *People v Morrin,*, 31 Mich.App. 301, 310-311, 323, 187 N.W.2d 434 (1971), then Judge, now Justice Levin, stated that the intent to kill may be implied where the actor actually intends to inflict great bodily harm or the natural tendency of his behaviour is to cause death or great bodily harm.
- **In the present case,** the defendant's savage and brutal beating of the decedent is amply sufficient to establish malice. He clearly intended to beat the victim and the natural tendency of defendant's behaviour was to cause great bodily harm.

(2) The appellant claimed that the prosecution failed to establish the elements of involuntary manslaughter.
The Court disagreed with this submission – Involuntary manslaughter may be based on the failure to perform a legal duty. Authority for this principle comes from *People v. Beardsley*, 150 Mich. 206, 113 N.W. 1128 (1907). The defendant was a supervisor of Oak Haven, stood in a position of authority over the victim and, by talking with the victim's parents and obtaining their permission to discipline the decedent, he directly and voluntarily assumed a parental function, and stood in a position of Loco parentis to the decedent.

Under such circumstances, the defendant's beating of the victim coupled with his failure to provide medical attention, when the decedent was unable to obtain some himself, violated the defendant's legal duty of care for the victim. The elements of involuntary manslaughter were adequately established.

(3) The appellant claimed that the trial court erred by allowing evidence of the first beating to be admitted.
The Court disagreed with this submission – holding that proper procedure was followed and that it was properly admitted as a like act tending to show the defendant's motive, intent, the absence of mistake or accident on defendant's part. M.C.L. s 768.27; M.S.A. s 28.1050. Even should we assume, Arguendo, the admission of such evidence to have been error, we would hold same to be harmless beyond a reasonable doubt.

The most complex point of appeal

(4) The defendant claims that the prosecution failed to present sufficient evidence of the causal connection between the defendant's acts and the victim's death.

The Court disagreed with this submission – referring to two cases primarily:

***People v Geiger* 10 Mich.App. 339, 159 N.W.2d 383 (1968),**
In this case, the defendant had struck his wife two or three times with his open hand and pushed her to the ground in such a manner that she bumped her head against

the car. The defendant picked her up and put her in his car. Urgent medical attention was needed but the defendant did nothing until after 6- 8 hours had passed.

In Geiger the medical cause of death was “aspiration of the gastric contents into the air passages with resultant shock, asphyxia, collapse and pulmonary edema’ ” (essentially choking on her own vomit after the beating).

The pathologist who performed the autopsy testified he thought that the blows to the head or side to the head or side of the face caused the minor brain damage which contributed to diminution of laryngeal reflexes, allowing the asphyxiation, and had it not been for the blows, the victim would have been able to vomit and remove her stomach contents in a
normal fashion.

***People v. McFee*, 35 Mich.App. 227, 192 N.W.2d 355 (1971),**
In this case, the defendant over a period of several hours, inflicted a severe beating upon a 12-year-old boy resulting in particles of partially digested food to become stuck in the vocal cord causing a cardiac arrest from the coughing reflex, the pathologist testified that in his best medical judgment there was a definite relationship between the bruising and the boy's death.

Judgement
In both Geiger and McFee the Court found the prosecution to have established a sufficient causal relationship. The present case is similar to these cases. In the present case the
pathologist testified that the trauma to the victim's legs caused the chain of events that led to the victim's death and that causation was not only medically probable but Medically likely. In People v.Geiger, supra, the Court quoted with approval from 26 Am.Jur., Homicide, s 52, p. 195, wherein it states:

“It is not indispensable to a conviction that the wounds be necessarily fatal and the direct cause of death. It is sufficient that they cause death indirectly through a chain of natural effects and causes unchanged by human action.” A similar analogy was made by the Court in McFee.

Such is the case here. Death was medically likely to have been caused by the beating through a chain of natural effects and causes unchanged by human action. Pulmonary edema resulted and the victim choked to death on his own vomit. Sufficient evidence of causal relationship was established by the prosecution.

The decision of the lower court is affirmed.

[The full case is available on the ENT.]

Vocabulary
Miranda warning
Second degree murder
Involuntary manslaughter
Pulmonary edima
Causation (legal sense)

R v Adomako (John Asare)

[1994] 3 W.L.R. 288

House of Lords

Lord Mackay of Clashfern; Lord Keith of Kinkel; Lord Goff of Chieveley; Lord Browne-Wilkinson; Lord Woolf

30 June 1994

Introduction

R v Adomako is an English House of Lords case in which the appellant, an anaesthetist failed to notice that an oxygen tube had become disconnected from a ventilator and consequently a patient died. The appellant appealed against his conviction for manslaughter due to gross negligence.

Summary of Facts

In this case the conviction arose out of the conduct of an eye operation carried out at the Mayday hospital, Croydon on 4 January 1987. The appellant was during the latter part of that operation, the anaesthetist in charge of the patient.

At approximately 11.05 a.m. a disconnection occurred at the endotracheal tube connection. The supply of oxygen to the patient ceased and this led to cardiac arrest at 11.14 a.m. During this period the appellant failed to notice or remedy the disconnection.

The appellant first became aware that something was amiss when an alarm sounded on the Dinamap machine, which monitors the patient's blood pressure. From the evidence it appears that some 4 minutes would have elapsed between the disconnection and the sounding of this alarm. When this alarm sounded the appellant responded in various ways by checking the equipment and by administering atropine to raise the patient's pulse. But at no stage before the cardiac arrest did he check the integrity of the endotracheal tube connection. The disconnection itself was not discovered until after resuscitation measures had been commenced.

For the prosecution it was alleged that the appellant was guilty of gross negligence in failing to notice or respond appropriately to obvious signs that a disconnection had occurred and that the patient had ceased to breathe.

Two expert witnesses gave evidence for the prosecution. Professor Payne described the standard of care as 'abysmal' while Professor Adams stated that in his view a competent anaesthetist should have recognised the signs of disconnection within 15 seconds and that the appellant's conduct amounted to 'a gross dereliction of care.'

On behalf of the appellant it was conceded at his trial that he had been negligent. The issue was therefore whether his conduct was criminal.

Judgement

The jury convicted the appellant of manslaughter by a majority of 11 to 1. The Court of Appeal (Criminal Division) dismissed the appellant's appeal against conviction but certified that a point of law of general public importance was involved in the decision to dismiss the appeal, namely:

'in cases of manslaughter by criminal negligence not involving driving but involving a breach of duty is it a sufficient direction to the jury to adopt the gross negligence test set out by the Court of Appeal in the present case following *Rex v. Bateman (1925) 19 Cr.App.R. 8* and Andrews v. Director of Public Prosecutions [1937] A.C. 576,

without reference to the test of recklessness as defined in *Reg. v. Lawrence (Stephen) [1982] A.C. 510* or as adapted to the circumstances of the case?'

House of Lords

The Lord Chancellor gave the leading judgement from the case

The decision of the Court of Appeal is reported sub nom. Reg. v. Prentice [1994] Q.B. 302 along with a number of other cases involving similar questions of law. The Court of Appeal held that except in cases of motor manslaughter the ingredients which had to be proved to establish an offence of involuntary manslaughter by breach of duty were the existence of the duty, a breach of the duty which had caused death and gross negligence which the jury considered to justify a criminal conviction; the jury might properly find gross negligence on proof of indifference to an obvious risk of injury to health or of actual foresight of the risk coupled either with a determination nevertheless to run it or with an intention to avoid it but involving such a high degree of negligence in the attempted avoidance as the jury considered justified conviction or of inattention or failure to advert to a serious risk going beyond mere inadvertence in respect of an obvious and important matter which the defendant's duty demanded he should address; and that, in the circumstances, the appeals of the two junior doctors and the electrician would be allowed and the appeal of the anaesthetist, namely Dr. Adomako, would be dismissed.

The reason that the Court of Appeal excepted the cases of motor manslaughter and their formulation of the law was the decision of this House in Reg. v. Seymour (Edward) [1983] 2 A.C. 493 in which it was held that where manslaughter was charged and the circumstances were that the victim was killed as a result of the reckless driving of the defendant on a public highway, the trial judge should give the jury the direction which had been suggested in *Reg. v. Lawrence (Stephen) [1982] A.C. 510* but that it was appropriate also to point out that in order to constitute the offence of manslaughter the risk of death being caused by the manner of the defendant's driving must be very high.

In opening his very cogent argument for the appellant before your Lordships, counsel submitted that the law in this area should have the characteristics of clarity, certainty, intellectual coherence and general applicability and acceptability. For these reasons he said the law applying to involuntary manslaughter generally should involve a universal test and that test should be the test already applied in this House to motor manslaughter. He criticised the concept of gross negligence which was the basis of the judgment of the Court of Appeal submitting that its formulation involved circularity, the jury being told in effect to convict of a crime if they thought a crime had been committed and that accordingly using gross negligence as the conceptual basis for the crime of involuntary manslaughter was unsatisfactory and the court should apply the law laid down in Seymour [1983] 2 A.C. 493 generally to all cases of involuntary manslaughter or at least use this as the basis for providing general applicability and acceptability.

Like the Court of Appeal your Lordships were treated to a considerable review of authority. I begin with *Rex v. Bateman, 19 Cr.App.R. 8* and the opinion of Lord Hewart C.J., where he said, at pp. 10-11:

'In expounding the law to juries on the trial of indictments for manslaughter by negligence, judges have often referred to the distinction between civil and criminal liability for death by

negligence. The law of criminal liability for negligence is conveniently explained in that way. If A has caused the death of B by alleged negligence, then, in order to establish civil liability, the plaintiff must prove (in addition to pecuniary loss caused by the death) that A owed a duty to B to take care, that that duty was not discharged, and that the default caused the death of B. To convict A of manslaughter, the prosecution must prove the three things above mentioned and must satisfy the jury, in addition, that A's negligence amounted to a crime. In the civil action, if it is proved that A fell short of the standard of reasonable care required by law, it matters not how far he fell short of that standard. The extent of his liability depends not on the degree of negligence, but on the amount of damage done. In a criminal court, on the contrary, the amount and degree of negligence are the determining question. There must be mens rea.'

Later he said, at pp. 11-12:

'In explaining to juries the test which they should apply to determine whether the negligence, in the particular case, amounted or did not amount to a crime, judges have used many epithets, such as 'culpable,' 'criminal,' 'gross,' 'wicked,' 'clear,' 'complete.' But, whatever epithet be used and whether an epithet be used or not, in order to establish criminal liability the facts must be such that, in the opinion of the jury, the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the state and conduct deserving punishment.'

After dealing with a number of authorities Lord Hewart C.J. went on, at pp. 12-13:
'The law as laid down in these cases may be thus summarised: If a person holds himself out as possessing special skill and knowledge and he is consulted, as possessing such skill and knowledge, by or on behalf of a patient, he owes a duty to the patient to use due caution in undertaking the treatment. If he accepts the responsibility and undertakes the treatment and the patient submits to his direction and treatment accordingly, he owes a duty to the patient to use diligence, care, knowledge, skill and caution in administering the treatment. No contractual relation is necessary, nor is it necessary that the service be rendered for reward. It is for the judge to direct the jury what standard to apply and for the jury to say whether that standard has been reached. The jury should not exact the highest, or a very high, standard, nor should they be content with a very low standard. The law requires a fair and reasonable standard of care and competence.

This standard must be reached in all the matters above mentioned. If the patient's death has been caused by the defendant's indolence or carelessness, it will not avail to show that he had sufficient knowledge; nor will it avail to prove that he was diligent in attendance, if the patient has been killed by his gross ignorance and unskillfulness. No further observation need be made with regard to cases where the death is alleged to have been caused by indolence or carelessness. As regards cases where incompetence is alleged, it is only necessary to say that the unqualified practitioner cannot claim to be measured by any lower standard than that which is applied to a qualified man. As regards cases of alleged recklessness, juries are likely to distinguish between the qualified and the unqualified man.

There may be recklessness in undertaking the treatment and recklessness in the conduct of it. It is, no doubt, conceivable that a qualified man may be held liable for recklessly

undertaking a case which he knew, or should have known, to be beyond his powers, or for making his patient the subject of reckless experiment.

Such cases are likely to be rare. In the case of the quack, where the treatment has been proved to be incompetent and to have caused the patient's death, juries are not likely to hesitate in finding liability on the ground that the defendant undertook, and continued to treat, a case involving the gravest risk to his patient, when he knew he was not competent to deal with it, or would have known if he had paid any proper regard to the life and safety of his patient.'

'The foregoing observations deal with civil liability. To support an indictment for manslaughter the prosecution must prove the matters necessary to establish civil liability (except pecuniary loss), and, in addition, must satisfy the jury that the negligence or incompetence of the accused went beyond a mere matter of compensation and showed such disregard for the life and safety of others as to amount to a crime against the state and conduct deserving punishment.'

Next I turn to Andrews v. Director of Public Prosecutions [1937] A.C. 576 which was a case of manslaughter through the dangerous driving of a motor car. In a speech with which all the other members of this House who sat agreed, Lord Atkin said, at pp. 581-582:
'of all crimes manslaughter appears to afford most difficulties of definition, for it concerns homicide in so many and so varying conditions. From the early days when any homicide involved penalty the law has gradually evolved 'through successive differentiations and integrations' until it recognises murder on the one hand, based mainly, though not exclusively, on an intention to kill, and manslaughter on the other hand, based mainly, though not exclusively, on the absence of intention to kill but with the presence of an element of 'unlawfulness' which is the elusive factor.

In the present case it is only necessary to consider manslaughter from the point of view of an unintentional killing caused by negligence, that is, the omission of a duty to take care. I do not propose to discuss the development of this branch of the subject as treated in the successive treatises of Coke, Hale, Foster and East and in the judgments of the courts to be found either in directions to juries by individual judges or in the more considered pronouncements of the body of judges which preceded the formal Court of Crown Cases Reserved. Expressions will be found which indicate that to cause death by any lack of due care will amount to manslaughter; but as manners softened and the law became more humane a narrower criterion appeared. After all, manslaughter is a felony, and was capital, and men shrank from attaching the serious consequences of a conviction for felony to results produced by mere inadvertence. The stricter view became apparent in prosecutions of medical men or men who professed medical or surgical skill for manslaughter by reason of negligence. As an instance I will cite Rex v. Williamson (1807) 3 C. & P. 635 where a man who practised as an accoucheur, owing to a mistake in his observation of the actual symptoms, inflicted on a patient terrible injuries from which she died. 'To substantiate that charge' - namely, manslaughter - Lord Ellenborough said, 'the prisoner must have been guilty of criminal misconduct, arising either from the grossest ignorance or the most criminal inattention.'

The word 'criminal' in any attempt to define a crime is perhaps not the most helpful: but it is plain that the Lord Chief Justice meant to indicate to the jury a high degree of negligence. So at a much later date in *Rex v. Bateman, 19 Cr.App.R. 8* a charge of manslaughter was made against a qualified medical practitioner in similar circumstances to those of Williamson's case.'

Lord Atkin then referred to the judgment of Lord Hewart C.J. from which I have already quoted and went on, at p. 583:

'Here again I think with respect that the expressions used are not, indeed they were probably not intended to be, a precise definition of the crime. I do not myself find the connotations of mens rea helpful in distinguishing between degrees of negligence, nor do the ideas of crime and punishment in themselves carry a jury much further in deciding whether in a particular case the degree of negligence shown is a crime and deserves punishment. But the substance of the judgment is most valuable, and in my opinion is correct. In practice it has generally been adopted by judges in charging juries in all cases of manslaughter by negligence, whether in driving vehicles or otherwise. The principle to be observed is that cases of manslaughter in driving motor cars are but instances of a general rule applicable to all charges of homicide by negligence.

Simple lack of care such as will constitute civil liability is not enough: for purposes of the criminal law there are degrees of negligence: and a very high degree of negligence is required to be proved before the felony is established. Probably of all the epithets that can be applied 'reckless' most nearly covers the case. It is difficult to visualise a case of death caused by reckless driving in the connotation of that term in ordinary speech which would not justify a conviction for manslaughter: but it is probably not all-embracing, for 'reckless' suggests an indifference to risk whereas the accused may have appreciated the risk and intended to avoid it and yet shown such a high degree of negligence in the means adopted to avoid the risk as would justify a conviction. If the principle of*Bateman's case, 19 Cr.App.R. 8* is observed it will appear that the law of manslaughter has not changed by the introduction of motor vehicles on the road. Death caused by their negligent driving, though unhappily much more frequent, is to be treated in law as death caused by any other form of negligence: and juries should be directed accordingly.'

In my opinion the law as stated in these two authorities is satisfactory as providing a proper basis for describing the crime of involuntary manslaughter. Since the decision in Andrews was a decision of your Lordships' House, it remains the most authoritative statement of the present law which I have been able to find and although its relationship to Reg. v. Seymour [1983] 2 A.C. 493 is a matter to which I shall have to return, it is a decision which has not been departed from.

On this basis in my opinion the ordinary principles of the law of negligence apply to ascertain whether or not the defendant has been in breach of a duty of care towards the victim who has died. If such breach of duty is established the next question is whether that breach of duty caused the death of the victim. If so, the jury must go on to consider whether that breach of duty should be characterised as gross negligence and therefore as a crime. This will depend on the seriousness of the breach of duty committed by the defendant in all the circumstances in which the defendant was

placed when it occurred. The jury will have to consider whether the extent to which the defendant's conduct departed from the proper standard of care incumbent upon him, involving as it must have done a risk of death to the patient, was such that it should be judged criminal.

It is true that to a certain extent this involves an element of circularity, but in this branch of the law I do not believe that is fatal to its being correct as a test of how far conduct must depart from accepted standards to be characterised as criminal. This is necessarily a question of degree and an attempt to specify that degree more closely is I think likely to achieve only a spurious precision.

The essence of the matter which is supremely a jury question is whether having regard to the risk of death involved, the conduct of the defendant was so bad in all the circumstances as to amount in their judgment to a criminal act or omission.

My Lords, the view which I have stated of the correct basis in law for the crime of involuntary manslaughter accords I consider with the criteria stated by counsel although I have not reached the degree of precision in definition which he required, but in my opinion it has been reached so far as practicable and with a result which leaves the matter properly stated for a jury's determination.

My Lords, in my view the law as stated in Reg. v. Seymour [1983] 2 A.C. 493 should no longer apply since the underlying statutory provisions on which it rested have now been repealed by the Road Traffic Act 1991 . It may be that cases of involuntary motor manslaughter will as a result become rare but I consider it unsatisfactory that there should be any exception to the generality of the statement which I have made, since such exception, in my view, gives rise to unnecessary complexity. For example in *Kong Cheuk Kwan v. The Queen (1985) 82 Cr.App.R. 18* it would give rise to unnecessary differences between the law applicable to those navigating vessels and the lookouts on the vessels.
I consider it perfectly appropriate that the word 'reckless' should be used in cases of involuntary manslaughter, but as Lord Atkin put it 'in the ordinary connotation of that word.' Examples in which this was done, to my mind, with complete accuracy are *Reg. v. Stone [1977] Q.B. 354* and *Reg. v. West London Coroner, Ex parte Gray [1988] Q.B. 467* .

In my opinion it is quite unnecessary in the context of gross negligence to give the detailed directions with regard to the meaning of the word 'reckless' associated with *Reg. v. Lawrence [1982] A.C. 510* . The decision of the Court of Appeal (Criminal Division) in the other cases with which they were concerned at the same time as they heard the appeal in this case indicates that the circumstances in which involuntary manslaughter has to be considered may make the somewhat elaborate and rather rigid directions inappropriate. I entirely agree with the view that the circumstances to which a charge of involuntary manslaughter may apply are so various that it is unwise to attempt to categorise or detail specimen directions. For my part I would not wish to go beyond the description of the basis in law which I have already given.

In my view the summing up of the judge in the present case was a model of clarity in analysis of the facts and in setting out the law in a manner which was readily comprehensible by the jury. The summing up was criticised in respect of the inclusion of the following passage:

'Of course you will understand it is not for every humble man of the profession to have all that great skill of the great men in Harley Street but, on the other hand, they are not allowed to practise medicine in this country unless they have acquired a certain amount of skill. They are bound to show a reasonable amount of skill according to the circumstances of the case, and you have to judge them on the basis that they are skilled men, but not necessarily so skilled as more skilful men in the profession, and you can only convict them criminally if, in your judgment, they fall below the standard of skill which is the least qualification which any doctor should have.

You should only convict a doctor of causing a death by negligence if you think he did something which no reasonably skilled doctor should have done.'

The criticism was particularly of the latter part of this quotation in that it was open to the meaning that if the defendant did what no reasonably skilled doctor should have done it was open to the jury to convict him of causing death by negligence. Strictly speaking this passage is concerned with the statement of a necessary condition for a conviction by preventing a conviction unless that condition is satisfied. It is incorrect to treat it as stating a sufficient condition for conviction. In any event I consider that this passage in the context was making the point forcefully that the defendant in this case was not to be judged by the standard of more skilled doctors but by the standard of a reasonably competent doctor. There were many other passages in the summing up which emphasised the need for a high degree of negligence if the jury were to convict and read in that context I consider that the summing up cannot be faulted.

For these reasons I am of the opinion that this appeal should be dismissed and that the certified question should be answered by saying:

'In cases of manslaughter by criminal negligence involving a breach of duty, it is a sufficient direction to the jury to adopt the gross negligence test set out by the Court of Appeal in the present case following *Rex v. Bateman, 19 Cr.App.R. 8* and Andrews v. Director of Public Prosecutions [1937] A.C. 576 and that it is not necessary to refer to the definition of recklessness in *Reg. v. Lawrence [1982] A.C. 510* , although it is perfectly open to the trial judge to use the word 'reckless' in its ordinary meaning as part of his exposition of the law if he deems it appropriate in the circumstances of the particular case.'

We have been referred to the Consultation Paper by the Law Commission on Criminal Law, Involuntary Manslaughter (1994) (Law Com. No. 135), and we have also been referred to a number of standard textbooks. I have also had the opportunity of considering the note on Reg. v. Prentice by Sir John Smith [1994] Crim.L.R. 292 since the hearing was completed. While I have not referred to these in detail I have derived considerable help in seeking to formulate my view as a result of studying them.

I have reached the same conclusion on the basic law to be applied in this case as did the Court of Appeal. Personally I would not wish to state the law more elaborately than I have done. In particular I think it is difficult to take expressions used in particular cases out of the context of the cases in which they were used and enunciate them as if applying generally. This can I think lead to ambiguity and perhaps unnecessary complexity. The task of trial judges in setting out for the jury the issues of fact and the relevant law in cases of this class

is a difficult and demanding one. I believe that the supreme test that should be satisfied in such directions is that they are comprehensible to an ordinary member of the public who is called to sit on a jury and who has no particular prior acquaintance with the law. To make it obligatory on trial judges to give directions in law which are so elaborate that the ordinary member of the jury will have great difficulty in following them, and even greater difficulty in retaining them in his memory for the purpose of application in the jury room, is no service to the cause of justice. T

he experienced counsel who assisted your Lordships in this appeal indicated that as a practical matter there was a danger in over elaboration of definition of the word 'reckless.' While therefore I have said in my view it is perfectly open to a trial judge to use the word 'reckless' if it appears appropriate in the circumstances of a particular case as indicating the extent to which a defendant's conduct must deviate from that of a proper standard of care, I do not think it right to require that this should be done and certainly not right that it should incorporate the full detail required in *Lawrence* .

Held

The appellant's conviction for manslaughter was upheld with the House of Lords disapproving the law as set out in his conviction for gross negligence manslaughter was upheld. The Lords ruled that the law as stated in R v Seymour [1983] 2 A.C. 493. It should no longer apply since the underlying statutory provisions on which it rested have now been repealed by the Road Traffic Act 1991.

[The full case is available on the ENT.]

Vocabulary
gross negligence
breach of duty
motor manslaughter
recklessness
pecuniary loss
a universal test
foresight of the risk
proper standard of care

R v Martin (Anthony Edward)

[2002] 2 W.L.R. 1

Court of Appeal (Criminal Division)
Lord Woolf LCJ; WrightJ; Grigson J
30 October 2001

Introduction

R v Martin [2002] 2 W.L.R 1 is an English criminal case where a man appealed against his conviction for murder, arguing that his personality disorder should have been considered when evaluating whether he had used “reasonable force” as required for self-defence. At the time the offences were committed, Mr Martin was being burgled by the two people whom he shot His conviction for murder was quashed by the Court of Appeal, and substituted with a conviction for manslaughter.

Summary of Facts

Mr Martin is 55 years of age, and during the time of the crime he lived at Bleak House which is an isolated farm near the village of Emneth Hungate in Norfolk. The farm has been in Mr Martin’s family for generations and he has lived there alone for 20 years.

On the night of 20 August 1999, Brendan Fearon and Freddie Barras were driven by a third man from Newark to the vicinity of Bleak House, which they subsequently entered by breaking a window on the ground floor. Both men were wearing gloves and carrying a torch and holdall bags. Although Fearon denied this, the circumstances gave rise to at least a very strong inference that they were intent on burglary.

The defendant claimed that he was asleep on the first floor and was disturbed by the noise. At some point he armed himself with a 12-bore Winchester pump-action shotgun which was capable of holding up to five cartridges, and loaded the gun. He asserted that he went down the stairs towards where he had seen a light. At some point, without giving any warning, he discharged the gun not less than three times; Barras was shot in the back and in his legs and Fearon was also shot in both legs. Although both managed to get out of another window, Barras collapsed and died a short distance from the house; Fearon managed to make his way to neighbouring premises and was subsequently arrested and taken to hospital. Barras's body was found the following day by a neighbour who went to round up the defendant's dogs.

The prosecution challenged Mr Martin's account; their case upon the first four counts was that Mr Martin, having been disturbed by the approach of the burglars, had lain in wait for them and shot at them at short range with the intention either of killing or seriously injuring them.

Mr Martin's case was that because of past experience he believed his house to be vulnerable to burglary and that the events of the night in question put him in genuine fear for his personal safety so that the discharge of the gun was in lawful self-defence.

There was no dispute that Mr Martin had shot the two men. Mr Martin's defence to the principal offences with which he was charged was that he was acting in self-defence. When this defence is raised, the prosecution has the burden of satisfying the jury so that they are sure that the defendant was not acting in self-defence. A defendant is entitled to

use reasonable force to protect himself, others for whom he is responsible and his property: see *Beckford v The Queen [1988] AC 130* .

In judging whether the defendant had only used reasonable force, the jury has to take into account all the circumstances, including the situation as the defendant honestly believes it to be at the time, when he was defending himself. It does not matter if the defendant was mistaken in his belief as long as his belief was genuine.

Accordingly, the jury could only convict Mr Martin if either they did not believe his evidence that he was acting in self-defence or they thought that Mr Martin had used an unreasonable amount of force. These were issues which were ideally suited to a decision of a jury.

Judgement

On 19th April 2000 in the Crown Court at Norwich before Owen J and a jury the defendant, Anthony Edward Martin, was convicted by majority of 10 to 2 for murder and wounding with intent. He was acquitted of attempted murder and of possession of the shotgun with intent to endanger life. He was sentenced to life imprisonment for murder, ten years' imprisonment concurrent for wounding with intent and 12 months imprisonment concurrent in respect of his possession of the shotgun without a certificate.

Court of Appeal

Grounds of appeal were lodged with this court by leading and junior counsel who represented Mr Martin at trial. Altogether ten grounds of appeal were put forward but the single judge refused leave on all save one (ground C) to which we shall return. Since the lodging of the original grounds of appeal Mr Martin has transferred his instructions to a fresh team of leading and junior counsel and solicitors. They now renew upon his behalf applications for leave to appeal against conviction on new and different grounds settled by the new team, together with applications for leave to call fresh evidence from five expert witnesses. We give leave to appeal on the first four fresh grounds and on the question of sentence.

No criticism is made of the judge's directions on the law of self-defence. When dealing with forensic evidence, the judge reminded the jury, in our view correctly, that the shots that had struck the wall and the door on the far side of the breakfast room from the stairs could not have been fired from the stairs as these two areas of damage were out of the line of sight. He also reminded the jury of Dr Arnold's evidence about the distance that there appeared to have been from the muzzle of the gun to the point of impact on the injured people and pointed out that those measurements, if correct, were indicative that the shots were fired from a point "not as far away as the staircase".

Psychiatric Issues

Mr Martin's original solicitors instructed a consultant psychiatrist, Professor Maden, to examine and report on Mr Martin. Mr Wolkind has criticised the terms of the instructions given by the original solicitors to Professor Maden. However, Professor Maden produced a comprehensive report. Professor Maden found no evidence that Mr Martin was then suffering from depression and no evidence of mental illness. His opinion was that:

(a) while Mr Martin would be regarded by many people as eccentric and a loner he did not suffer from a personality disorder;

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(b) Mr Martin described occasional periods of depression in the past, one of which may have been severe enough to warrant a psychiatric diagnosis at the time, but after such a long period with no contemporaneous accounts of the episode it was impossible to be certain. If he was depressed then, he recovered without treatment and there was no suggestion that he was depressed at the time of the alleged offence;

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(c) Mr Martin was not suffering from any form of mental disorder nor is there anything to suggest that he was suffering from mental disorder at the time of the alleged offence;

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(d) the feelings which he describes when he realised that there were people in the house are consistent with severe anxiety and may be considered a normal reaction to grossly abnormal circumstances; and

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(e) in the absence of any form of psychiatric disorder Mr Martin did not have a medical defence to the charges he faced. He was fit to plead and stand trial according to the usual criteria.

However, after Mr Martin's trial and conviction the new defence team instructed another distinguished psychiatrist, Dr Joseph, to see Mr Martin and prepare a report. He conducted two lengthy interviews with Mr Martin. He found that Mr Martin suffers from, and was suffering from at the time of the offence, a long-standing paranoid personality disorder which can be classified as an abnormality of the mind arising from inherent causes within the terms of section 2 of the Homicide Act 1957 . It was and remains the opinion of Dr Joseph that if Mr Martin intended to kill or to cause grievous bodily harm when he actually killed Barras, then his mental responsibility was substantially diminished.
The defence also instructed Miss Craissati, a chartered forensic and clinical psychologist, to examine Mr Martin. Her findings mirrored those of Dr Joseph.
Dr Joseph made two further findings which are said to be significant. Under the heading of self-defence, Dr Joseph reported:

(a) taking into account Mr Martin's mental characteristics at the time of the killing, Mr Martin would have perceived a much greater danger to his physical safety than the average person. Dr Joseph considered that Mr Martin honestly thought that he was in an extremely perilous situation and that he needed to take immediate defensive action to counter the attack he was under, and

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(b) it is well recognised that at times of extreme emotional arousal, similar to that described by Mr Martin prior to the killing, memory can be impaired. Mr Martin was suffering from depression as well as being in a state of extreme emotional arousal at the time of the killing. He therefore had those characteristics which are most closely associated with amnesia. Dr Joseph, because of this, believed Mr Martin may have suffered from a genuine period of amnesia when he was standing on the stairs and he may have walked further down the stairs without being aware of doing so.

The defence argues that the evidence of Dr Joseph and Miss Craissati establishes that Mr Martin's convictions are unsafe.

Dr Joseph's diagnosis was based almost entirely upon the history given to him by Mr Martin. It is apparent that Dr Joseph accepted that Mr Martin was a truthful witness. He said so in terms: "I believe he honestly thought that he was in an extremely perilous situation and that he needed to take immediate defensive action to counter the attack he was under."

However, this was the very issue which the jury had to decide and Dr Joseph's evidence that he thought Mr Martin's account was honest would have been irrelevant at the trial in relation to self-defence.

While we recognise Dr Joseph's evidence could be said to fall within the admissibility test set out by Lawton LJ in *Turner [1975] QB 834* on the issue of self-defence, in this case we do not consider it would have advanced the defence of self-defence. While it is true that the jury were unaware of Dr Joseph's diagnosis that Mr Martin suffered from a paranoid personality disorder and so consequently might have perceived a greater danger to his physical safety than the average person in his situation, they did have the evidence of Mr Martin himself (on which Dr Joseph based his diagnosis), including that Mr Martin was terrified for his life. They knew that Mr Martin was a very eccentric man indeed and that he was obsessed with the security of his home.

A large part of the summing up was spent dealing with this evidence, with the judge making clear the undoubted relevance of what Mr Martin believed the situation to be. The jury could have been in no doubt but that their judgment of Mr Martin's actions had to be made by placing themselves in Mr Martin's shoes. In our judgment had that part of Dr Joseph's opinion on this aspect of the case been before the jury it would not have affected their decision and its omission does not render his conviction unsafe.

For these reasons the fresh medical evidence has no bearing on the jury's rejection of Mr Martin's contention that he was entitled to be acquitted on the grounds that he was acting in self-defence. The position as to the fresh evidence relating to diminished responsibility is different.

Here the evidence is admissible and relevant. The jury did not have the opportunity of considering this issue. Although the issue was never raised at the trial this was because the evidence was not then available to Mr Martin. Mr Martin is entitled to rely on the evidence for the purposes of his appeal (*R v Weekes (Stephen) [1999] 2 Cr App R 520*). The conviction for murder must therefore be quashed.

Having dismissed Mr Martin's other grounds of appeal, the question arises as to whether we should order a fresh trial on the issue of diminished responsibility. We have no doubt that we should not do so. Section 3 of the Criminal Appeal Act 1968 allows us to substitute a conviction of the alternative offence of guilty of manslaughter by reason of diminished responsibility. We are entitled to do this since it appears to us that "the jury must have been satisfied of facts which proved him guilty of the other offence", namely manslaughter by reason of diminished responsibility. We therefore so find Mr Martin guilty of manslaughter.

Sentence

The conclusion to which we have come is that the minimum sentences which we feel it would be proper to impose are: for manslaughter, five years' imprisonment; for wounding with intent the sentence shall be reduced to three years' imprisonment; and the sentence of 12 months' imprisonment for the possession of the uncertified shot gun should remain unaltered. All the sentences shall be concurrent. In view of the time Mr Martin has already spent in custody, within about a year he will be eligible for consideration for parole.

[The full case is available on the ENT]

Vocabulary
Burglary
Self-defence
Reasonable force
Manslaughter
Diminished responsibility
Forensic evidence
Wound with intent

R v Shepherd (Martin Brian)

[1987] Crim. L.R. 686

Court of Appeal (Criminal Division)
(Lord Justice Mustill, Mr. Justice Gatehouseand Mr. Justice Rougier)
13 May 1987

Introduction

R v Shepherd [1987] Crim. L.R. 686 is an English criminal case where the accused was charged with burglary although he argued; whilst he was fully willing at first he only continued due to threats of violence. His conviction was quashed by the Court of Appeal as the defence of duress should have been left to the jury to decide and not withdrawn by the trial judge.

Summary of Facts

The appellant in the company of other men entered retail premises and while some distracted the shopkeepers others carried away boxes of goods, usually cigarettes. Ultimately some of the thieves were caught, including the appellant. He was charged with burglary of the premises in question and at his trial he raised a defence on the following lines: he had originally been recruited to the joint enterprise by one P, one of the thieves, and had played a willing part in the first of the offences (which was on the list of those taken into consideration); but he had been unnerved by the experience and had wanted to give up.
Then P had threatened him and his family with violence and thus he was compelled to carry on with the thefts. His story received some colour from the fact that P was subsequently sent to prison for an assault on the appellant committed within the precincts of the court while the case was awaiting trial.
The trial judge withdrew the defence of duress from the jury on the basis that it was unsound for, even if the appellant's story was true, voluntary participation in any joint criminal act entailed that any act of duress subsequently committed would not be considered when that defence was raised.

Judgement

On January 6, 1987 in the Crown Court at Southampton (Mr. Assistant Recorder M. E. Cotterill) the appellant was convicted of five offences of burglary (counts 1, 2, 6, 7 and 9). He was sentenced to nine months' imprisonment concurrent.

He also pleaded guilty to theft and admitted being in breach of a probation order, and for that was sentenced to one month's imprisonment consecutive to each other and to the above.

Court of Appeal

The appellant appealed on the ground that the assistant recorder erred in directing the jury that duress could not be a defence to the charges in the light of the appellant's admission that he took part in the first offence voluntarily, and in the light of the decision in *Sharp (1987) 85 Cr.App.R. 207*.

This appeal requires the Court to consider once again the circumstances in which the defendant to a criminal charge is entitled to be exonerated if his acts were done under the influence of duress.

On the appellant's pleas of not guilty the matter came for trial in the Crown Court on January 5, 1987. We mention this date because it was some three months before another division of this Court gave judgment in *Sharp (1987) 85 Cr.App.R. 207, [1987] 3 W.L.R. 1*. If the order of events had been different, and the guidance given in that judgment had been available to counsel and the learned assistant recorder, it may well be that a different course would have been adopted.

At all events what happened was this. Counsel for the appellant very properly informed the prosecution that the defence of duress was to be raised, and of the basis for it. Counsel for the prosecution intimated that he would contend that on the authorities the defence was unsound, even if the appellant's story was true, since his original participation in the joint venture had been voluntary.

Since the validity of this argument would affect the scope of the evidence and cross-examination, it was thought proper to raise the question of the law at the outset in order to save a possible waste of time and cost. The learned assistant recorder agreed to this proposal, and after argument he ruled in favour of the prosecution.

In spite of this the appellant maintained his pleas, and gave evidence on his own behalf. For reasons which we do not follow, he was permitted to give his story of duress, even though the assistant recorder had already ruled that it was immaterial—as indeed he was to direct the jury when he reminded them of what the appellant had said. The story was not however tested in any way.

The jury retired for only ten minutes before returning verdicts of guilty, having really been left no choice in the matter. The appellant now appeals, contending that the issue of duress should not have been withdrawn from the jury.

The basis for this contention, as it was developed in the course of the appeal, was substantially different from the argument presented at the trial. It was (and still is) accepted on behalf of the prosecution that duress may in appropriate circumstances be available as a defence to a person charged with offences such as the present. It was (and still is) accepted on behalf of the appellant that this defence is not available when the defendant has, to put the matter neutrally, voluntarily brought himself into the situation from which the duress has arisen. The problem concerns the breadth of this exception.

At the trial no recourse was had to authority beyond a very compressed account in Archbold, Criminal Pleading, Evidence and Practice (42nd ed.) paragraph 17-58, of the judgment delivered by the Lord Chief Justice of Northern Ireland in Fitzpatrick [1977] N.I.L.R. 20. This was relied on by counsel for the appellant in support of a submission that the accused forfeits the right to rely on duress only where he has joined an “organisation” possessing some kind of formal, although illicit, structure such as has existed in Northern ***50**Ireland and elsewhere. The judge rejected this contention. Any doubts about whether he was right to do so have been laid to rest by Sharp (*supra*), and we need say no more about this point. The exclusion

from the defence of duress is undoubtedly capable of operating where the persons with whom the defendant involves himself are simply co-conspirators banded together for a single offence or a group of offences.

This was not however the only question of principle which arose on the facts which we have summarised. Does a voluntary participation in any joint criminal act entail that any act of duress thereafter committed by another participant is to be excluded from consideration when the defence is raised? Or is the exception to be more narrowly understood?
The learned assistant recorder did not have the benefit of argument on this point, but evidently understood the passage cited from Archbold as supporting the former opinion, for he ruled as follows:

"I read the Lord Chief Justice of Northern Ireland to be saying that those who play with fire cannot complain if they are thereafter burnt. Those who voluntarily associate with others or even only with one other in anticipation of their being led into crime cannot thereafter complain if matters get out of hand and go beyond their contemplation. I see no reason at all to read the judgment as applying only to political organisations or to violent organisations or to large organisations. If it be the case that Mr. Shepherd, the defendant in this case, voluntarily went along with the first of those escapades he cannot rely upon threats which arose thereafter to avoid responsibility for his participation in the later escapades."
This ruling, which was in any event debatable, was put seriously in question by the subsequent decision in Sharp (*supra*), and the issue was argued in full before us, with citation from Hurley and Murray [1967] V.R. 526, Lynch (1975) 61 Cr.App.R. 6, Fitzpatrick (*supra*),*R. v. Howe [1987] A.C. 417* and *Sharp* itself.

At the conclusion of the argument we had arrived at the following opinion:

(1) Although it is not easy to rationalise the existence of duress as a defence rather than a ground of mitigation, it must in some way be founded on a concession to human frailty in cases where the defendant has been faced with a choice between two evils.

(2) The exception which exists where the defendant has voluntarily allied himself with the person who exercises the duress must be founded on the assumption that, just as he cannot complain if he had the opportunity to escape the duress and failed to take it, equally no concession to frailty is required if the risk of duress is freely undertaken.

(3) Thus, in some instances it will follow inevitably that the defendant has no excuse: for example, if he has joined a group of people dedicated to violence as a political end, or one which is overtly ready to use violence for other criminal ends. Members of so called paramilitary illegal groups, or gangs of armed robbers, must be taken to anticipate what may happen to them if their nerve fails, and cannot be heard to complain if violence is indeed threatened.

(4) Other cases will be difficult. There is no need for recourse to extravagant examples. Common sense must recognise that there are certain kinds of criminal enterprises the joining of which, in the absence of any knowledge of propensity to violence on the part of one member, would not lead another to suspect that a decision to think better of the whole affair might lead him into serious trouble. The logic which appears to underlie the law of duress would suggest that if trouble did unexpectedly materialise, and if it put the defendant into a dilemma in which a reasonable man might have chosen to act as he did, the concession to human frailty should not be denied to him.

Having arrived at these conclusions on the argument addressed to us, it appeared to us plain there had been a question which should properly have been put to the jury and that the

appeal must accordingly be allowed. We intimated that this would be so, whilst taking the opportunity to put our reasons in writing.

Naturally a proper scepticism would have been in order when the defence came to be examined at the trial, for there were many aspects on which the appellant could have been pressed. In particular, his prior knowledge of P would require investigation. At the same time the trial would not have been a foregone conclusion, since the concerted shoplifting enterprise did not involve violence to the victim either in anticipation or in the way it was actually put into effect. The members of the jury have had to ask themselves whether the appellant could be said to have taken the risk of P's violence simply by joining a shoplifting gang of which he was a member. Of course even if they were prepared to give the appellant the benefit of the doubt in this respect, an acquittal would be far from inevitable. The jury would have then to consider the nature and timing of the threats, and the nature and persistence of the offences, in order to decide whether the defendant was entitled to be exonerated. It may well be that, in the light of the evidence as it emerged, convictions would have followed. But the question was never put to the test. The issues were never investigated. The jury were left with no choice but to convict.

In these circumstances we saw no alternative but to hold that the convictions could not stand. The sentences necessarily fell away, leaving the fortunate appellant with no penalty attached to the first offence of which he was undeniably guilty, but which was not the subject of any charge.

That was the position at the conclusion of the argument. Since then we have been able to study a transcript of the ruling of the trial judge in Sharp(Kenneth Jones J.), a ruling which was approved on appeal (see (1987) 85 Cr.App.R. at 212, [1987] A.C. at 7F). It is sufficiently important in the present context to justify quotation at length:

“In my judgment there is no authority binding upon me on this point, but there are the strongest and most powerful pointers to what is the correct answer. In my judgment the law does not go so far as to embody that which was submitted by the Crown in the Court of Criminal Appeal in Northern Ireland in Lynch's case [1975] N.I. 35, namely that the defence of duress is not available to an accused who voluntarily joins in a criminal enterprise and is afterwards subjected to threats of violence, but in my judgment the defence of duress is not available to an accused who voluntarily exposes and submits himself to illegal compulsion. It is not merely a matter of joining in a criminal enterprise; it is a matter of joining in a criminal enterprise of such a nature that the defendant appreciated the nature of the enterprise itself and the attitudes of those in charge of it, so that when he was in fact subjected to compulsion he could fairly be said by a jury to have voluntarily exposed himself and submitted himself to such compulsion. Therefore on the facts advanced by or which are about to be advanced by Mr. Mylne, I hold that duress is not available as a defence to Sharp to the charge of murder, or indeed of manslaughter. Of course it follows that it would be a question of fact for the jury as to whether Sharp had voluntarily exposed and submitted himself to this illegal compulsion. The facts, as Mr. Mylne proposes to advance them, do not necessarily dispose of that matter.

It is still a matter for the jury to decide—though as I am sure he will concede, the evidence lies very heavily against him in view of his client's admitted complicity in this offence, and indeed his client's view of the man who was in charge of it, namely Hussey. If the jury can find it possible to say that he, although joining in this criminal enterprise did not voluntarily expose or submit himself to the possibility of coercion, compulsion by Hussey, then the jury would be putting him then in the position of the innocent bystander, and duress would be available to him as a defence. If the jury took the view on the totality of the evidence it has to be fairly and justly said that he voluntarily disposed and submitted himself to illegal

compulsion, then the defence of duress is not open to him. So much for the defence of duress."

This ruling, if we may say so, corresponds exactly with the view which we had independently formed. In the interests of accuracy it must be acknowledged that it was the ruling itself, rather than the whole of the passage in which it was expressed, which was the subject of the approval on appeal. Nevertheless the terms of the judgment delivered by the Lord Chief Justice were such as to make it clear, to our mind, that the approach of the trial judge was correct. In the context of that case, given the facts, such a conclusion was fatal to the appeal. Here, by contrast, it demonstrates that the issue ought to have been left to the jury.
In conclusion we should add that we have also examined the provisions of various penal statutes and codes emanating from other common law countries: for example, the Crime Act 1961, section 24 of New Zealand, the Model Penal Code, section 2.09(2) of the United States; and codes of Canada and various states in Australia. These are not identical in their terms, but they are all consistent with the view which we have expressed, as are the opinions set out in Law Commission Working Paper No. 83, paragraphs 2.35 to 2.38, and in articles including those by P. J. Rowe "Duress and Criminal Organisations" (1979), 42 M.L.R. 102, and R. S. O'Reagan, "Duress and Criminal Conspiracies" [1971] Crim. L.R. 35.

Judgement

For these reasons therefore we consider that the conviction should be quashed.

[The full case is available on the ENT.]

Vocabulary
Duress
Criminal enterprise
Coercion
Penal
Conspiracy

Regina v Lipman [1970] 1 QB 152

Court of Appeal (Criminal Division)
Lord Justice Widgery, Lord Justice Fenton Atkinson and Mr Justice James
1969 July 28, 29, 31

Introduction
Regina v Lipman [1970] 1 QB 152 is a case from the English criminal system, which fundamentally established the principle that voluntary intoxication, regardless of the level involved, cannot be used as a criminal defence to the crime of manslaughter.

Summary of Facts
The applicant (for the appeal) was charged with murder but convicted of the crime of manslaughter (of a woman named Claudie Delbarre) and was sentenced at the Central Criminal Court on the 10th of October 1968, to six years imprisonment.
The applicant and the female victim in the case were both drug addicts. On the 16th of September, 1967 they both decided to take the drug known as L.S.D together.

Then on the morning of the 18th of September (1967) the applicant, who holds American citizenship, hastily booked out of the hotel where he was staying and subsequently left the country.
The day after the applicant left the country, the 19th of September, the victim's landlord found her dead in her room. The woman had received two blows to the head resulting in haemorrhage of the brain. However the cause of death was in fact due to asphyxiation as a result of having had eight inches of bed sheets crammed into her mouth.
After extradition proceedings, the applicant was returned to the UK and at his trial he gave evidence admitting that he had gone to the victim's room with her to take L.S.D. However, there he had experienced hallucinations, commonly referred to as a "trip", after taking the drug. He stated that he hallucinated that he was descending into the Earth and was being attacked by snakes and so he had tried to fight them.
During the trial, there was no real dispute to the fact that the applicant had indeed killed the victim during the course of his hallucinations. However, he contended that he had no knowledge of what he was doing, and no intention to harm the victim.

Direction to the Jury

On October 10, 1968, the jury on their retirement were given by Milmo J. a note in the following terms:

"If the jury find that it was the act or acts of the [defendant] which caused the death of the [victim], but that he is not guilty of murder, then the jury would have to consider whether he is guilty of manslaughter. "He would be guilty of manslaughter if the jury were to find either –

(1) that he must have realised, before he got himself into the condition he did by taking the drugs, that acts such as those he subsequently performed and which resulted in the death, were dangerous; or

(2) That the taking of the drugs which the [defendant] took that night was dangerous and that the [defendant] must have realised that by taking them he was incurring A risk of some harm, not necessarily serious harm, to some other person or persons; or

(3) That in taking these drugs in the circumstances, in which he took them, the [defendant] was grossly negligent and reckless and this involves the jury considering whether or not he thought that what he was doing was safe so far as other people were concerned.

"The above grounds are not mutually exclusive and may overlap. If the [defendant] is found guilty of manslaughter, the jury will be asked to state on which ground or grounds they reached their verdict."

Verdict

The jury by a majority of 10 to 2 found the defendant not guilty of murder but guilty of manslaughter by reason of grounds **(1)** and **(3)** in the note. He was sentenced to six years' imprisonment, with a recommendation for deportation.

The applicant now seeks leave to appeal both against his conviction and sentence.

Court of Appeal

The applicant sought to appeal, arguing that;

(1) The judge failed to give full and proper or any effect to **section 8 of the Criminal Justice Act, 1967**, and was wrong in law in ruling that, if the acts of the [defendant] caused the death of the [victim] but did not amount to murder, then the [defendant] would be guilty of manslaughter if, assessing the state of his mind before he took the drugs which he did take, he would have appreciated that the acts he subsequently performed and which caused the death were dangerous. ...

(2) The judge misdirected the jury in directing them as set out in ground 1 above. ..."

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Regarding point (1) the defence contended that the question to be answered is to what extent the law relating to unlawful killing under the influence of drink or drugs was altered by **section 8 of the Criminal Justice Act, 1967**.

No attempt is made to differentiate between drink and drugs. The authorities, before Section 8, established that an unlawful killing under the influence of drink must amount at least to manslaughter.

The authorities are: *Director of Public Prosecutions v. Beard* [1920] A.C. 479; *Bratty v. Attorney- General for Northern Ireland* [1963] A.C. 386; and *Attorney-General for Northern Ireland v. Gallagher* [1963] A.C. 349.

Before 1967 some degree of mens rea was necessary, and the question was whether a sober and reasonable man would foresee that there was a risk. That is to say, the test was objective: see *Reg. v. Church* [1966] 1 Q.B. 59, 69, a case concerning an unlawful act causing death but without intent. In Director of Public Prosecutions v. Smith [1961] A.C. 290 the objective test was applied. Manslaughter required proof of mens rea to the extent that a sober and reasonable person could have foreseen that there was a risk of some harm resulting.

If, therefore, a guilty mind was necessary, the objective test is converted by **section 8 of the Act of 1967** to a subjective test applied at the time of committing the act, so that the jury are now required to consider the actual state of the defendant's mind at that time. If the defendant had no knowledge of what he was doing and no intention to harm, he could not have been found guilty of manslaughter, and the jury were misdirected.

Widgery L.J.

The Court did not agree with the reasoning of the defence

Widgery L.J who delivered the judgment of the court saw no reason to distinguish between the effects of drugs voluntarily taken and drunkenness voluntarily induced. For the purposes of criminal responsibility we see no reason to distinguish between the effect of drugs voluntarily taken and drunkenness voluntarily induced. As to the latter there is a great deal of authority. First of all, in Director of Public Prosecutions v. Beard [1920] A.C. 479 and more recently in two further House of Lords cases, the same principle is to be found.

(1) **Bratty v. Attorney-General for Northern Ireland [1963] A.C. 386**.

I quote from the speech of Lord Denning where he said, at p. 410: "Another thing to be observed is that it is not every involuntary act which leads to a complete acquittal. Take first an involuntary act which proceeds from a state of drunkenness. If the drunken man is so drunk that he does not know what he is doing, he has a defence to any charge, such as murder or wounding with intent, in which a specific intent is essential, but he is still liable to be convicted of manslaughter or unlawful wounding for which no specific intent is necessary, see Beard's case."

The other case is

(1) Attorney-General for Northern Ireland v. Gallagher [1963] A.C. 349,

and I cite a passage, again from Lord Denning, at p. 381: "If a man is charged with an offence in which a specific intention is essential (as in murder, though not in manslaughter), then evidence of drunkenness, which renders him incapable of forming that intention, is an answer: see Beard's case."

Analysis of Authorities

Those authorities show quite clearly, in our opinion, that it was well established that no specific intent was necessary to support a conviction for manslaughter based upon a killing in the course of an unlawful act and that; accordingly, self-induced drunkenness was no defence to such a charge.

Manslaughter by Neglect

In a case of manslaughter by neglect, however, it has been recognised that some mental element must be established, and for this I turn to *Andrews v. Director of Public Prosecutions* [1937] A.C. 576. In that case Lord Atkin deals in some detail with the mental element involved in manslaughter by neglect. He said, at p.582:

"To substantiate that charge - namely, manslaughter - Lord Ellen-borough C.J. [in Rex v. Williamson (1807) 3 C. & P. 635] said, 'the prisoner must have been guilty of criminal misconduct, arising either from the grossest ignorance or the most criminal inattention.' The word 'criminal' in any attempt to define a crime is perhaps not the most helpful: but it is plain that Lord Ellen-borough C.J. meant to indicate to the jury a high degree of negligence.

Even if intent has to be proved to constitute the unlawful act, no specific further intent is required to turn that act into manslaughter. Manslaughter remains a most difficult offence to define because it arises in so many different ways and, as the mental element (if any) required to establish it varies so widely, any general reference to mens rea is apt to mislead.

Judgement

We can dispose of the present application by reiterating that when the killing results from an unlawful act of the prisoner no specific intent has to be proved to convict of

manslaughter and self-induced intoxication is accordingly no defence. Since in the present case the acts complained of were obviously likely to cause harm to the victim (and did, in fact, kill her) no acquittal was possible and the verdict of manslaughter, at the least, was inevitable.

If and so far as this matter raises a point of law on which the defendant was entitled to appeal without leave, such appeal is dismissed. On the question of sentence we think the sentence was fully justified to bring home the grave consequences which may result from the taking of drugs of this kind.

Accordingly, both applications for leave to appeal against conviction and sentence are refused. Appeal against conviction dismissed.

Application for leave to appeal against sentence refused. July 31, 1969. Certificate under section 1 (2) of the Administration of Justice Act, 1960, that point of law of general public importance involved in decision, namely, question "Whether, in the case of an unlawful physical act causing the death of another, to justify a verdict of manslaughter the Crown must prove that the accused at the time of such physical act either intended or foresaw that harm was likely to result to the victim." Leave to appeal refused.

[The full case is available on the ENT.]

Vocabulary

Homicide
Manslaughter
Mens rea
Asphyxia
Verdict
Voluntary intoxication
Applicant
Defendant
Plea

Regina v Byrne (Patrick Joseph)

[1960] 2 Q.B. 396

Court of Appeal
Lord Parker C.J. Hilbery and Diplock JJ.
04 July 1960

Introduction

Regina v Byrne [1960] 2 Q.B.396 is an English Court of Appeal case in which the appellant killed a young girl and then mutilated her body. However he claimed the defence of **diminished responsibility** due to an"*abnormality of the mind* "as he only carried out such actions because he was suffering from **irresistible impulses** which he was unable to control. He was successful and the murder conviction was reduced to manslaughter.

Summary of Facts

The appellant was convicted of murder before Stable J at Birmingham Assizes and sentenced to imprisonment for life. The victim was a young woman whom he strangled in the Y.W.C.A hostel and after her death he committed horrifying mutilations upon her dead body. The facts as to the killing were not disputed, and were admitted in a long statement.

The only defence was that in killing his victim the accused was suffering from diminished responsibility as defined by section 2 of the Homicide Act 1957, and was, accordingly, guilty of manslaughter, not murder.

Medical evidence

Three medical witnesses were called by the defence;

(1) the senior medical officer at Birmingham Prison and

(2) two specialists in psychological medicine.

Their uncontradicted evidence was that the accused was a sexual psychopath, that he suffered from abnormality of mind, as indeed was abundantly clear from the other evidence in the case, and that such abnormality of mind arose from a condition of arrested or retarded development of mind or inherent causes.

The nature of the abnormality of mind of a sexual psychopath, according to the medical evidence, is that he suffers from violent perverted sexual desires which he finds it difficult or impossible to control. Save when under the influence of his perverted sexual desires he may be normal.

All three doctors were of opinion that the killing was done under the influence of his perverted sexual desires, and **although all three were of opinion that he was not insane in the technical sense of insanity laid down in the M'Naughten Rules it was their view that his sexual psychopathy could properly be described as partial insanity.**

Direction to the Jury

The judge, after summarising the medical evidence, gave to the jury a direction of law on the correctness of which this appeal turns. He told the jury that if on the evidence they came to the conclusion that the facts could be fairly summarised as follows:

(1) “From an early age he has been subject to these perverted violent desires, and in some cases has indulged his desires;

(2) the impulse or urge of these desires is stronger than the normal impulse or urge of sex to such an extent that the subject finds it very difficult or perhaps impossible in some cases to resist putting the desire into practice;

(3) the act of killing this girl was done under such an impulse or urge; and,

(4) that setting aside these sexual addictions and practices, this man was normal in every other respect"; those facts with nothing more would not bring a case within the section, and do not constitute such abnormality of mind as substantially to impair a man's mental responsibility for his acts. "In other words," he went on, "mental affliction is one thing. The section is there to protect them. The section is not there to give protection where there is nothing else than what is vicious and depraved."

Judgement

The appellant was found guilty of murder with the Court holding that;

(1) that "abnormality of mind" in **section 2** meant a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal and was wide enough to cover the mind's activities in all its aspects, including the ability to form a rational judgment as to whether an act was right or wrong, and the ability to exercise will power to control physical acts in accordance with that rational judgment.

(2) That inability to exercise will power to control physical acts, provided that it was due to abnormality of mind from one of the causes specified in **section 2 (1)** , was sufficient to entitle the accused to the benefit of the section; difficulty in controlling his physical acts depending on the degree of difficulty, might be; it was for the jury to decide on the whole of the evidence whether such inability or difficulty had, not as a matter of scientific certainty but on the balance of probabilities, been established, and in the case of difficulty whether that was so great as to amount in their view to a substantial impairment of the accused's mental responsibility for his acts.

(3) That whether the accused was suffering from abnormality of mind and whether the abnormality was such as substantially impaired his mental responsibility were matters for the jury on which they were entitled to disagree with the medical evidence, but the aetiology of the abnormality was a matter to be determined by expert evidence; that the direction withdrew from the jury the essential determination of fact which it was their province to decide; the medical evidence and the other evidence plainly pointed to the conclusion that the appellant was on the border-line of insanity, and properly directed, the jury could not have come to any conclusion but that the defence under **section 2 (1)** was made out.

The appellant appealed on grounds of misdirection.

Court of Appeal

At appeal the defence argued a number of points.

The defence raised under section 2 of the Homicide Act, 1957 , is a statutory defence and, as such, the judge has to look at the words of the statute and must not attempt to redefine it. He may assist a jury by giving illustrations: Reg. v. Walden ; Bank of *England v. Vagliano Bros.* It is difficult to draw the line between illustration and definition, but in the present case the judge clearly redefined the section by limiting its application.

A sexual psychopath, given certain circumstances, is likely to act in a certain way because he cannot control himself. Expert medical evidence can only show that the accused is an abnormal person and unlikely to be able to control himself. It is for the jury to decide whether the accused wilfully refused to control himself or whether he could not help himself. The distinction between the ability to control acts and power to distinguish between right and wrong is unnecessary. The latter is an allusion to the **M'Naughten Rules**. Power to control oneself is quite different: see Reg. v. Spriggs with reference to uncontrollable impulse.

With regard to the wording of **section 2 (1),** "substantial" means something considerable; one has to consider whether the accused's mind was materially affected at the time of the offence. It is partly a question of right and wrong and partly of moral responsibility. It may be that a man is so far out of his mind that he does not know what he is doing. Although that was negatived in the present case, the judge might have said that in certain circumstances a person with the accused's abnormality might not have known what he was doing.

"Substantial impairment of mental responsibility" may mean that although a person knows that what he is doing is wrong, his abnormality is such as to prevent him from controlling his impulse. The passage in the summing-up of which complaint is made errs not only by putting matters of definition and exclusion, but also because the judge there decided a question of fact which should have been left to the jury.

The judge should have left the jury to decide whether a sexual pervert came within the section. The general effect of the summing-up on the jury must have been: "If you think the appellant is nothing but a sexual pervert, then you need not consider section 2." It was an invitation to the jury to take an emotional view, which should have been guarded against, particularly in view of the facts of the case. The facts and evidence surrounding the killing might have been of more assistance to the jury than any medical evidence. The facts themselves clearly showed insane thoughts on the part of the accused. The present case is not to be distinguished from *Reg. v. Matheson*, in which basically the same situation arose: "Substantial impairment of mental responsibility" might mean partial insanity, but it was not put in that way, and the issue of partial insanity was not put to the jury.

Lord Parker CJ

In referring to the judge's direction to the jury Lord Parker CJ stated that;

Taken by themselves these last words are unobjectionable, but it is contended on behalf of the appellant that the direction taken as a whole involves a misconstruction of the section, and had the effect of withdrawing from the jury an issue of fact which it was peculiarly their province to decide.

Section 2 of the Homicide Act, 1957 , is dealing with the crime of murder in which there are at common law two essential elements:

(1) The physical act of killing another person, and

(2) the state of mind of the person who kills or is a party to the killing, namely, his intention to kill or to cause grievous bodily harm. Subsection (1) of section 2 does not deal with the first element. It modified the existing law as respects the second element, that is, the state of mind of the person who kills or is a party to the killing.

Before the passing of the Homicide Act, 1957 , a person who killed or was party to a killing could escape liability for murder - as for any other crime requiring mens rea - if he showed that at the time of the killing he was insane within the meaning of the M'Naughten Rules, that is, "that he was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act that he was doing, or if he did know it that he did not know that he was doing wrong."

If established, this defence negates mens rea and the accused was and still is entitled to a special verdict of "guilty of the act but insane" at the time of doing the act, which is an acquittal of any crime.

The test is a rigid one: it relates solely to a person's intellectual ability to appreciate: **(a)** the physical act that he is doing, and **(b)** whether it is wrong. If he has such intellectual ability, his power to control his physical acts by exercise of his will is irrelevant.

Whether loss of self-control induced by provocation negatived the ordinary presumption that a man intends the natural ordinary consequences of his physical acts so that, in such a case, the prosecution had failed to prove the essential mental element in murder (namely, that the accused intended to kill or to inflict grievous bodily harm) is academic for the purposes of our consideration.

What is relevant is that loss of self-control has always been recognised as capable of reducing murder to manslaughter, but that the criterion has always been the degree of self-control which would be exercised by a reasonable man, that is to say, a man with a normal mind.

It is against that background of the existing law that section 2(1) of the Homicide Act, 1957 , falls to be construed. To satisfy the requirements of the subsection the accused must show: **(a)** that he was suffering from an abnormality of mind, and **(b)** that such abnormality of mind **(i)** arose from a condition of arrested or retarded development of mind or any inherent causes, or was induced by disease or injury and (ii) was such as substantially impaired his mental responsibility for his acts in doing or being a party to the killing.

"*Abnormality of mind*," which has to be contrasted with the time-honoured expression in the **M'Naughten Rules** "defect of reason," means a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal. It appears to us to be wide enough to cover the mind's activities in all its aspects, not only the perception of physical acts and matters, and the ability to form a rational judgment as to whether an act is right or wrong, but also the ability to exercise will power to control physical acts in accordance with that rational judgment. The expression "mental responsibility for his acts" points to a consideration of the extent to which the accused's mind is answerable for his physical acts which must include a consideration of the extent of his ability to exercise will power to control his physical acts.

Whether the accused was at the time of the killing suffering from any "**abnormality of mind**" in the broad sense which we have indicated above is a question for the jury. On this question medical evidence is no doubt of importance, but the jury are entitled to take into consideration all the evidence, including the acts or statements of the accused and his demeanour. They are not bound to accept the medical evidence if there is other material before them which, in their good judgment, conflicts with it and outweighs it.

It appears to us that the judge's direction to the jury that the defence under section 2 of the Act was not available even though they found the facts set out in Nos. 2 and 3 of the judge's summary, amounted to a direction that difficulty or even inability of an accused person to exercise will power to control his physical acts could not amount to such abnormality of mind as substantially impairs his mental responsibility.

For the reasons which we have already expressed we think that this construction of the Act is wrong. Inability to exercise will power to control physical acts, provided that it is due to abnormality of mind from one of the causes specified in the parenthesis in the subsection is, in our view, sufficient to entitle the accused to the benefit of the section; difficulty in controlling his physical acts depending on the degree of difficulty, may be. It is for the jury to decide on the whole of the evidence whether such inability or difficulty has, not as a matter of scientific certainty but on the balance of probabilities, been established, and in the case of difficulty whether the difficulty is so great as to amount in their view to a substantial impairment of the accused's mental responsibility for his acts.

The direction in the present case thus withdrew from the jury the essential determination of fact which it was their province to decide.

As already indicated, the medical evidence as to the appellant's ability to control his physical acts at the time of the killing was all one way. The evidence of the revolting circumstances of the killing and the subsequent mutilations as of the previous sexual history of the appellant pointed, we think plainly, to the conclusion that the accused was what would be described in ordinary language as on the border-line of insanity or partially insane. Properly directed, we do not think that the jury could have come to any other conclusion than that the defence under section 2 of the Homicide Act was made out.

Decision of the Court of Appeal

The appeal will be allowed and a verdict of manslaughter substituted for the verdict of murder. The only possible sentence having regard to the tendencies of the accused is imprisonment for life. The sentence will, accordingly, not be disturbed.

[The full case is available on the ENT.]

Vocabulary

Diminished responsibility
McNaughtan Rules
Abnormality of the mind
Insanity
Defect of reason

Regina v Moloney

[1985] 2 W.L.R. 648

House of Lords
Lord Hailsham of St Marylebone, Lord Fraser of Tullybelton,
Lord Edmund-Davies, Lord Keith of Kinkel, and Lord Bridge of Harwich
1985, January 28, 29; March 21

Introduction

Regina v Moloney [1985] 2 W.L.R. 648 is an English House of Lords case, which upheld an appeal, substituting a conviction for murder for manslaughter. The Court held that the law on the requisite intent was unclear and that where specific intent is necessary, the probability of the accused having foreseen the consequences must be little short of overwhelming if intent is to be established.

Summary of Facts

In the early hours of 22 November 1981, the defendant, who had been drinking heavily along with his stepfather to whom he was deeply attached, fired a single cartridge from a twelve-bore shotgun which hit his stepfather from a range of six feet killing him instantly.
The two men had stayed up drinking after a family party and the defendant, a serving soldier, in his signed statement to the police alleged that the deceased had

claimed that he could "outshoot," "outload" and "outdraw" his stepson and had requested him to take out two shotguns that were in the house so that the claim could be put to the test.
In his statement the defendant also declared, "I did not aim the gun. I just pulled the trigger and he was dead." At his trial for murder the defendant stated in evidence that he had no idea in discharging the gun that it would injure his stepfather. "It was just a lark."

Direction to the Jury

The judge in his summing up to the jury stated the defence badly as a denial of intent, without reference to the defendant's evidence to the effect that he did not realise that the gun was aiming at his stepfather. The judge directed the jury that in order to prove the defendant guilty of murder the prosecution had to prove an intention to kill or to cause really serious bodily harm to the deceased.
But the judge had earlier in the summing up given the following direction on intent: "When the law requires that something must be proved to have been done with a particular intent it means this: a man intends the consequences of his voluntary act

(a) when he desires it to happen, whether or not he foresees that it will probably happen; and

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(b) when he foresees that it will probably happen, whether he desires it or not."

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The defence contended that this was misdirection to the jury which robbed the appellant of the opportunity of a manslaughter verdict.

Judgement

The defendant was convicted of murder.
His appeal against conviction was dismissed by the Court of Appeal (Criminal Division).
However, On 7 June 1984 the Court of Appeal (Criminal Division) certified that the following point of law of general public importance was involved in their decision, namely,
"Is malice aforethought in the crime of murder established by proof that when doing the act which causes the death of another the accused either:
(a) intends to kill or do serious harm; or **(b)** foresees that death or serious harm will probably occur whether or not he desires either of these consequences.
Consequently, the House of Lords granted leave to appeal.

House of Lords

Lord Bridge of Harwich

On appeal to the House of Lords, Lord Bridge gave the leading judgement in the case.
The undisputed facts that the appellant loved his stepfather and that there was no premeditation or rational motivation, could not, as any reasonable juror would understand, rebut this inference. If, on the other hand, as the appellant was in substance asserting, it never crossed his mind, in his more or less intoxicated condition and when suddenly confronted by his stepfather's absurd challenge, that by pulling the trigger he might injure, let alone kill, his stepfather, no question of foresight of consequences arose for consideration. Whatever his state of mind, the appellant was undoubtedly guilty of a high degree of recklessness. But, so far as I know, no one has yet suggested that recklessness can furnish the necessary element in the crime of murder.

If the jury had not demonstrated, by the question they asked after four hours of deliberation, that the issue of intent was one they did not understand, there might be room for further argument as to the outcome of this appeal. As it is, the jury's question, the terms of the judge's further direction, and the jury's decision, just over an hour later to return a unanimous verdict of guilty of murder, leave me in no doubt, with every respect to the trial judge, and the Court of Appeal, that this was an unsafe and unsatisfactory verdict.

That conclusion would be sufficient to dispose of this appeal.

But since I regard it as of paramount importance to the due administration of criminal justice that the law should indicate the appropriate direction to be given as to the mental element in the crime of murder, or indeed in any crime of specific intent, in terms which will be both clear to judges and intelligible to juries**, I must first examine the present state of the law on that subject**, and, if I find that it leads to some confusion, I must next consider whether it is properly within the judicial function of your Lordships' House to attempt some clarification and simplification. I emphasise at the outset that this is in no sense an academic, but essentially a practical, exercise.

I could not, however hard I tried, hope to emulate the outstanding erudition with which the speeches in your Lordships' House in *Reg. v. Hyam [1975] A.C. 55* , studied the history and development of, and the authorities relevant to, the concept of "malice aforethought," to use the anachronistic and now wholly inappropriate phrase which still lingers on in the definition of murder to denote the necessary mental element. It will be sufficient for my purposes to consider, as shortly as may be, the most significant developments in this field within the past 30 years.

The golden rule should be that, when directing a jury on the mental element necessary in a crime of specific intent, the judge should avoid any elaboration or paraphrase of what is meant by intent, and leave it to the jury's good sense to decide whether the accused acted with the necessary intent, unless the judge is convinced that, on the facts and having regard to the way the case has been presented to the jury in evidence and argument, some further explanation or elaboration is strictly necessary to avoid misunderstanding.

In trials for murder or wounding with intent, I find it very difficult to visualise a case where any such explanation or elaboration could be required, if the offence consisted of a direct attack on the victim with a weapon, except possibly the case where the accused shot at A and killed B, which any first year law student could explain to a jury in the simplest of terms.

Even where the death results indirectly from the act of the accused, I believe the cases that will call for a direction by reference to foresight of consequences will be of extremely rare occurrence. I am in full agreement with the view expressed by Viscount Dilhorne that, in *Reg. v. Hyam [1975] A.C. 55* , itself, if the issue of intent had been left without elaboration, no reasonable jury could have failed to convict. I find it difficult to understand why the prosecution did not seek to support the conviction, as an alternative to their main submission, on the ground that there had been no actual miscarriage of justice.

I do not, of course, by what I have said in the foregoing paragraph, mean to question the necessity, which frequently arises, to explain to a jury that intention is something quite distinct from motive or desire. But this can normally be quite simply explained by reference to the case before the court or, if necessary, by some homely example. A man who at London Airport, boards a plane which he knows to be bound for Manchester, clearly intends to travel to Manchester, even though Manchester is the last place he wants to be and his motive for boarding the plane is simply to escape pursuit. The possibility that the plane may have engine trouble and be diverted to Luton does not affect the matter. By boarding the

Manchester plane, the man conclusively demonstrates his intention to go there, because it is a moral certainty that that is where he will arrive.

I return to the two uncertainties noted by the Criminal Law Revision Committee in the Report referred to above as arising from *Reg. v. Hyam [1975] A.C. 55* , which still remain unresolved. I should preface these observations by expressing my view that the differences of opinion to be found in the five speeches in Reg. v. Hyam have, as I believe, caused some confusion in the law in an area where, as I have already indicated, clarity and simplicity are, in my view, of paramount importance. I believe it also follows that it is within the judicial function of your Lordships' House to lay down new guidelines which will achieve those desiderata, if we can reach broad agreement as to what they should be.

In one sense I should be happy to adopt in its entirety the qualified negative answer proposed by my noble and learned friend on the Woolsack to the certified question in *Reg. v. Hyam [1975] A.C. 55* , because, if I may say so, it seems to me to be supported by the most convincing jurisprudential and philosophical arguments to be found in any of the speeches in Reg. v. Hyam. But I have to add at once that there are two reasons why I cannot regard it as providing practical guidance to judges who have to direct juries in the rare cases where foresight of probable consequences must be canvassed with the jury as an element which should affect their conclusion on the issue of intent.

First, I cannot accept that the suggested criterion that the act of the accused, to amount to murder, must be "aimed at someone" as explained in Director of Public Prosecutions v. Smith [1961] A.C. 290 by Viscount Kilmuir L.C., at p. 327, is one which would be generally helpful to juries. The accused man in Director of Public Prosecutions v. Smith was driving a car containing stolen goods.

When told to stop by a police constable he accelerated away. The constable clung to the side of his car and the accused, in busy traffic, pursued an erratic course in order to shake the constable off. When finally shaken off, the constable fell in front of another car and was killed. In this context it was, no doubt, entirely apposite to say, as Viscount Kilmuir L.C. did, at p. 327: "The unlawful and voluntary act must clearly be aimed at someone in order to eliminate cases of negligence or of careless or dangerous driving." But what of the terrorist who plants a time bomb in a public building and gives timely warning to enable the public to be evacuated? Assume that he knows that, following evacuation, it is virtually certain that a bomb disposal squad will attempt to defuse the bomb. In the event the bomb explodes and kills a bomb disposal expert. In our present troubled times, this is an all too tragically realistic illustration. Can it, however, be said that in this case the bomb was "aimed" at the bomb disposal expert? With all respect, I believe this criterion would create more doubts than it would resolve.

Secondly, I believe that my noble and learned friend, Lord Hailsham of St. Marylebone L.C.'s inclusion in the mental element necessary to a conviction of murder of "the intention to expose a potential victim," inter alia, to "a serious risk that ... grievous bodily harm will ensue from his acts" (*[1975] A.C. 55* , 79) comes dangerously near to causing confusion with at least one possible element in the crime of causing death by reckless driving, and by inference equally of motor manslaughter, as identified by Lord Diplock in the later case of *Reg. v. Lawrence (Stephen) [1982] A.C. 510* , 526, 527, where the driving was such "as to create an obvious and serious risk of causing physical injury to some other person" and the driver "having recognised that there was some risk involved, had nonetheless gone on to take it." If the driver, overtaking in a narrow country lane in the face of an oncoming cyclist, recognises and takes not only "some risk" but a serious risk of hitting the cyclist, is he to be held guilty of murder?

Starting from the proposition established by *Reg. v. Vickers [1957] 2 Q.B. 664* , as modified by Director of Public Prosecutions v. Smith [1961] A.C. 290 that the mental element in murder requires proof of an intention to kill or cause really serious injury, the first fundamental question to be answered is whether there is any rule of substantive law ***928*** that foresight by the accused of one of those eventualities as a probable consequence of his voluntary act, where the probability can be defined as exceeding a certain degree, is equivalent or alternative to the necessary intention. I would answer this question in the negative. Here I derive powerful support from the speech of my noble and learned friend, Lord Hailsham of St. Marylebone L.C., in *Reg. v. Hyam [1975] A.C. 55* . He said, at p. 75:

"I do not, therefore, consider, as was suggested in argument, that the fact that a state of affairs is correctly foreseen as a highly probable consequence of what is done is the same thing as the fact that the state of affairs is intended."
and again, at p. 77:

"I do not think that foresight as such of a high degree of probability is at all the same thing as intention, and, in my view, it is not foresight but intention which constitutes the mental element in murder."

The irrationality of any such rule of substantive law stems from the fact that it is impossible to define degrees of probability, in any of the infinite variety of situations arising in human affairs, in precise or scientific terms. As Lord Reid said in *Southern Portland Cement Ltd. v. Cooper [1974] A.C. 623* , 640:

"Chance probability or likelihood is always a matter of degree. It is rarely capable of precise assessment. Many different expressions are in common use. It can be said that the occurrence of a future event is very likely, rather likely, more probable than not, not unlikely, quite likely, not improbable, more than a mere possibility, etc. It is neither practicable nor reasonable to draw a line at extreme probability."

I am firmly of opinion that foresight of consequences, as an element bearing on the issue of intention in murder, or indeed any other crime of specific intent, belongs, not to the substantive law, but to the law of evidence. Here again I am happy to find myself aligned with my noble and learned friend, Lord Hailsham of St. Marylebone L.C., in *Reg. v. Hyam [1975] A.C. 55* , where he said, at p. 65: "Knowledge or foresight is at the best material which entitles or compels a jury to draw the necessary inference as to intention." A rule of evidence which judges for more than a century found of the utmost utility in directing juries was expressed in the maxim: "A man is presumed to intend the natural and probable consequences of his acts." In Director of Public Prosecutions v. Smith [1961] A.C. 290 your Lordships' House, by treating this rule of evidence as creating an irrebuttable presumption and thus elevating it, in effect, to the status of a rule of substantive law, predictably provoked the intervention of Parliament by section 8 of the Criminal Justice Act 1967 to put the issue of intention back where it belonged, viz., in the hands of the jury, "drawing such inferences from the evidence as appear proper in the circumstances." I do not by any means take the conjunction of the verbs "intended or foresaw" and "intend or foresee" in that section as an indication that Parliament treated them as synonymous; on the contrary, two verbs were needed to connote two different states of mind.

I think we should now no longer speak of presumptions in this context but rather of inferences. In the old presumption that a man intends the natural and probable consequences of his acts the important word is "natural." This word conveys the idea that in the ordinary course of events a certain act will lead to a certain consequence unless something unexpected supervenes to prevent it. One might almost say that, if a consequence is natural, it is really otiose to speak of it as also being probable.

Section 8 of the Criminal Justice Act 1967 leaves us at liberty to go back to the decisions before that of this House in Director of Public Prosecutions v. Smith [1961] A.C. 290 and it is here, I believe, that we can find a sure, clear, intelligible and simple guide to the kind of direction that should be given to a jury in the exceptional case where it is necessary to give guidance as to how, on the evidence, they should approach the issue of intent.
I know of no clearer exposition of the law than that in the judgment of the Court of Criminal Appeal (Lord Goddard C.J., Atkinson and Cassels JJ.) delivered by Lord Goddard C.J. in *Rex v. Steane [1947] K.B. 997* where he said, at p. 1004:

"No doubt, if the prosecution prove an act the natural consequence of which would be a certain result and no evidence or explanation is given, then a jury may, on a proper direction, find that the prisoner is guilty of doing the act with the intent alleged, but if on the totality of the evidence there is room for more than one view as to the intent of the prisoner, the jury should be directed that it is for the prosecution to prove the intent to the jury's satisfaction, and if, on a review of the whole evidence, they either think that the intent did not exist or they are left in doubt as to the intent, the prisoner is entitled to be acquitted."

In the rare cases in which it is necessary to direct a jury by reference to foresight of consequences, I do not believe it is necessary for the judge to do more than invite the jury to consider two questions. First, was death or really serious injury in a murder case (or whatever relevant consequence must be proved to have been intended in any other case) a natural consequence of the defendant's voluntary act? Secondly, did the defendant foresee that consequence as being a natural consequence of his act? **The jury should then be told that if they answer yes to both questions it is a proper inference for them to draw that he intended that consequence.**

Judgement

My Lords, I would answer the certified question in the negative. I would allow the appeal, set aside the verdict of murder, substitute a verdict of manslaughter and remit the case to the Court of Appeal (Criminal Division) to determine the appropriate sentence. Having regard to the time the appellant has already spent in custody, the case should be listed for hearing at the earliest possible date.

[The full case is available on the ENT.]

Vocabulary

Foreseeability
Specific intent
Foresight
Guidelines
Grounds of appeal

EXERCISES

1) Professional English in Use[5]

Duncan Ritchie, a barrister, is talking to a visiting group of young European lawyers.

A

Criminal justice

'The state **prosecutes** those **charged with a crime**. The police **investigate a crime** and may **apprehend suspects** and **detain them in custody**. If the police decide an **offender** should be prosecuted, a file on the case is sent to the Crown Prosecution Service (CPS) – the national prosecution service for England and Wales. The CPS must consider whether there is enough **evidence** for a **realistic prospect of conviction**, and if so, whether the public interest requires a prosecution. They can decide to either go ahead with the prosecution, send the case back to the police for a **caution**, or take no further action. **Criminal proceedings** can be **initiated** either by **the serving of a summons** setting out the offence and requiring **the accused** to attend court, or, in more serious cases, by a **warrant of arrest** issued by a Magistrates' Court. Lawyers from the CPS may act as **public prosecutors**. The Criminal Defence Service provides **legal aid**, which funds the services of an independent duty solicitor who represents the accused in the police station and in court. However, at the end of a Crown Court case the judge has the power to order the defendant to pay some or all of the **defence costs**.'

Note: If Green is prosecuted for a crime, the ensuing trial will be called the case of **R v** Green. **R** is the abbreviation for the Crown (*Regina* for a Queen or *Rex* for a King); **v** (Latin for *versus*) is said **'against'** in a criminal case.

B

Categories of criminal offence

'There are three categories of criminal offence. **Summary offences**, tried without a jury, are minor crimes only **triable** in the Magistrates' Court. **Indictable offences** are serious crimes, such as murder, which can only be heard in the Crown Court. The formal document containing the **alleged offences**, supported by facts, is called the **indictment**. A case which can be heard in either the Magistrates' Court or the Crown Court, such as theft or burglary, is **triable either way**. If the defendant **pleads guilty**, the Magistrates' Court can either **proceed to sentence** or **commit to the Crown Court for sentence**, where more **severe penalties** are available. If there is a **not guilty plea**, the court can decide the mode of trial. The person charged may request a **trial by jury**. If granted, such trials take place in the Crown Court.'

Note: **indictable offences** are also known as **notifiable offences** in the UK.

C

Criminal court proceedings

'The English system of justice is **adversarial**, which means that each side collects and presents their own evidence and attacks their opponent's by **cross-examination**. In a criminal trial, **the burden of proof is on** the prosecution to **prove beyond reasonable doubt** that the accused is guilty. A **person accused** or **under arrest** for an offence may be **granted bail** and temporarily released. However, bail may be refused, for example if there are **grounds for believing** that the accused would **fail to appear for trial** or commit an offence. In the Crown Court, there may be a **preparatory hearing** for a complex case before the **jury** is **sworn in**. Prior to the trial, there is a statutory requirement for **disclosure** by the prosecution and defence of material relevant to the case, for example details of any **alibis** – people who can provide proof of the accused's whereabouts at the time of the crime – or **witnesses** – people who may have seen something relevent to the crime. Once a trial has begun, the defendant may be advised by counsel to change his or her plea to guilty, in expectation of a **reduced sentence**. If, at the end of the trial, the court's **verdict** is not guilty, then the defendant is **acquitted**.'

[5] See full references p. 59

Complete the definitions. Look at A and B opposite to help you.

1 a ..... – a court document authorising the police to detain someone
2 an ..... – a written statement with details of the crimes someone is charged with
3 a ..... – a formal order to attend court

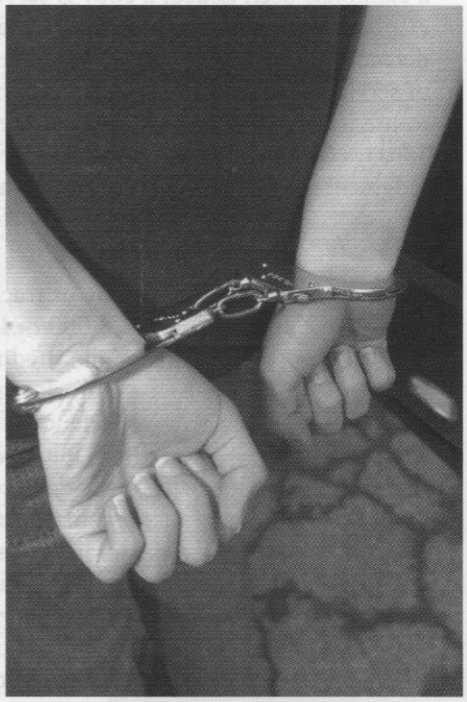
Make word combinations from A, B and C opposite using words from the box. Then use appropriate word combinations to complete the sentences below.

criminal	doubt	sentence	indictable	severe	plea	realistic	guilty
reasonable	defence	proceedings	costs	reduced	prospect	offences	penalties

1 The Crown Prosecutor considers whether there's sufficient evidence to provide a ..... of conviction.
2 There should be no conviction without proof beyond ..... .
3 The Crown Court always hears ..... such as manslaughter.
4 In sentencing serious crimes, courts can impose ..... .
5 At the end of a trial, a defendant may be ordered to pay a contribution towards ..... .

Replace the underlined words and phrases with alternative words and phrases from A, B and C opposite. Pay attention to the grammatical context. There is more than one possibility for one of the answers.

a Bail may be refused and the defendant may be (1) held in police custody.
b Alternatively, the defendant may be (2) found not guilty by the court and discharged.
c Once proceedings have been initiated, the defendant (3) comes before the court.
d The police formally (4) accuse the suspect in the police station.
e If the offender pleads guilty in the Magistrates' Court, the court imposes a (5) punishment.
f The police investigate a serious offence and (6) arrest a suspect.
g The suspect may ask for (7) release from custody before the trial.



Put the sentences in 5.3 into the correct order chronologically. Look at A, B and C opposite to help you. The first stage is f.

Over to you

Describe the process of a criminal trial in your legal system as if to a client from a different system.

For more information on the UK Crown Prosecution Service, go to: www.cps.gov.uk/; for the US Department of Justice, go to: www.usdoj.gov/.

Exercise 24: Translate the following sentences into English

1) L'accusé a été reconnu coupable et condamné à une peine d'emprisonnement ferme de vingt ans en raison de circonstances aggravantes. C'était un récidiviste.

2) Si le prévenu est reconnu coupable de conduite en état d'ivresse, il peut faire l'objet d'une suspension de permis et est passible d'une amende.

3) La sanction la plus efficace contre les hooligans est une interdiction de se rendre au stade.

4) Une remise de peine est possible lorsque le prévenu plaide coupable avant l'audience.

5) Si la personne jugée n'a pas d'antécédents judiciaires, le juge peut décider de la condamner à une peine d'emprisonnement avec sursis.

6) En droit français, le juge peut condamner quelqu'un reconnu coupable d'abus de confiance à une amende de 375 000 euros.

7) Quiconque agit violemment à l'encontre d'autrui encourt des travaux d'intérêt général.

8) Si le condamné a commis une infraction mineure et qu'il s'agit de sa première infraction, le juge peut le relaxer avec ou sans condition.

Exercise 25: Fill in the gaps in the following passage on English criminal procedure using the words or expressions in the following list

Crown, Crown Prosecution Service, adversarial, file, carry, custody, offence, arrested, offender, prosecution, conduct, set out, instruct, Public

In the English (1)_____ criminal justice system, when an (2)_____ is reported, the police (3)_____ out an investigation. Police officers have statutory investigative powers (4)_____ in the Police and Criminal Evidence Act, amended in 2003 and 2005 by different laws (CJA and SOCPA). If a suspect is (5)_____, he is taken into (6)_____ and informed of his rights at the police station.

In 1986, an independent public authority, the (7)_____, was set up to ensure a uniform system of (8)_____ across the country. As a result, the investigation and prosecution stages have been separated. The CPS is headed by the Director of (9)_____ Prosecutions. As they represent the State, prosecutors are called (10)_____ prosecutors. They are charged with reviewing the (11)_____ of the case to determine whether or not to prosecute the alleged (12) _____. They also (13)_____ prosecutions in the Magistrates' Court or (14)_____ a lawyer who acts as prosecuting counsel in the Crown Court.

Exercise 26: Match each of the following offences with its French equivalent

English offences	French equivalents
1) road traffic offence	a) attentat à la pudeur
2) criminal damage	b) viol
3) common assault	c) homicide involontaire
4) theft	d) dégradation volontaire
5) drink driving	e) infraction au Code de la route
6) indecent assault	f) vol avec violence
7) drug trafficking	g) assassinat
8) aggravated assault	h) voies de fait armé
9) robbery	i) conduite en état d'ivresse
10) rape	j) vol
11) involuntary manslaughter	k) voies de fait simple
12) murder	l) trafic de stupéfiants

Exercise 27: Match each verb with the most appropriate expression

E.g. "to call a witness".

Verb	Expression	Verb	Expression
to call	a prosecution	to impose	premises
to grant	bail conditions	to carry out	an appeal
to instruct	a case	to commit	an offence
to abide by	in custody	to search	into custody
to direct	an offence	to take someone	guilty
to conduct	bail	to discontinue	in court
to quash	a lawyer	to plead	an investigation
to prosecute	a jury	to dismiss	a sentence
to adjourn	a witness	to release someone	a case
to remand	a conviction	to appear	on bail

Exercise 28: Complete the table below describing Magistrates' Courts and the Crown Court

	Current number of courts	Jurisdiction	Mode of trial	Sentencing powers	Judges and personnel
Magistrates' Courts					
Crown Court					

Exercise 29: Fill in the gaps using the correct preposition or Ø (= no preposition)

In 2006, after a two-month investigation carried (1)___ by the Metropolitan Police, Arthur Siemens was arrested (2)___ suspicion of drug trafficking and assault. He was taken (3)___ police custody and questioned for several hours. While (4)___ custody, he confessed (5)___ taking part in a drug-dealing ring but pleaded not guilty (6)___ assault. He was then prosecuted (7) ___ robbery. Initially the police denied (8)___ him bail so the defendant appealed (9)___ this decision. The magistrates finally released him (10)___ bail provided he abide (11)___ certain conditions, one of which was to obey (12)___ a curfew. However, while (13)___ bail he continued to use drugs and was re-arrested and remanded (14)___ custody pending trial. He was tried in a Magistrates' Court and found guilty (15)___ assault. As the magistrates decided that his case required a higher penalty than a six-month prison sentence, they sent the defendant (16)___ the Crown Court (17)___ sentencing. The Crown Court judge sentenced him (18)___ a one-year prison term.

Exercise 30: Indicate the stressed syllable in the following words, then fill in the table below

Acquit, advocate, arrest (noun), arrest (verb), burden, commit, convict (noun), convict (verb), conviction, custody, defence, duty, evidence, guilty, innocent, judgment, manslaughter, murder, offence, offender, prosecute, prosecutor, robbery, sentence

Initial syllable stressed	Middle syllable stressed	Final syllable stressed

Exercise 31: Activity

1) Why must the prosecution prove guilt "beyond reasonable doubt"?

2) Find out how one becomes a judge in France, then consider the relative merits of the English and French paths to the judiciary.

3) Find out what the role of the judge is in a criminal trial in France, then discuss the advantages and disadvantages of the systems in the two countries.

Exercise 32: Say if the following words or expressions are used in civil law, criminal law or both

Track, tort, prosecution, a claim, guilty, defendant, tribunal, trial, appeal, claimant, damage, damages, contract, summons, liable, offender, ADR, libel, sue

Listening 1: White-collar crime in the 21st century

You are going to hear a law professor being interviewed on a university radio station programme. Professor John Poulos is a faculty member at the University of California Davis School of Law. After practising law in California, he introduced the law school's first course on white-collar crime.

14 4.1 Listen to the interview. Does Professor Poulos think that white-collar crime is less serious than, as serious as or more serious than violent street crime?

15 4.1 Listen again and decide whether these statements are true (T) or false (F), according to the professor.

1 New technology has led to a decrease in white-collar crime.
2 Street crime is generally punished more harshly than white-collar crime.
3 Increasingly, white-collar crime is committed by employees high up in the corporate hierarchy.
4 The number of people who are victims of white-collar crime is significant.
5 White-collar crime has had little effect on the US economy.

Language use 2: Talking about cause and effect

16 4.1 In the interview, Professor Poulos talks about changes in white-collar crime and the effect of white-collar crime on society. Listen again and complete these extracts.

1 The internationalisation of the economy ..... more opportunities for white-collar crime.
2 While violent crime frequently ..... the victims of that crime, it is usually fairly limited.
3 But when you have a savings and loans scandal, as we've seen in the past, or an Enron scandal, those crimes ..... millions of people.
4 Enron ..... large, large numbers of people.
5 The other is the sheer mass of injuries inflicted on investors in cases like Enron, which ..... the system of investing in the USA.
6 Part of the slow recovery of the economy ..... white-collar crime on the investment environment.

17 Match the two halves of the sentences.

1 Rising poverty in US cities has led	**a** an impact on the whole economy.
2 Anti-social behaviour adversely	**b** older people, as they sometimes lose their life savings.
3 Knife crime mostly	**c** affects the communities we live in.
4 White-collar crime has	**d** impacts young men.
5 Fraud has a big impact on	**e** to a rise in gun crime.

Speaking 1: White-collar crime

18 Discuss these questions with a partner. As much as possible, make use of the expressions in Exercise 16.

1 How serious do you think white-collar crime is? What do *you* think are the most important effects of white-collar crime on society?
2 Should people who commit business crimes be punished in the same way as people who commit other crimes?
3 Have there been any well-publicised cases of corporate crime in your jurisdiction?

Reading 2: White-collar crime: insider dealing and market abuse

One type of white-collar crime is insider dealing (also known as insider trading). It refers to the act of trading in **securities** by people who have confidential information about a company's finances or operations. The article on the next page deals with the first case to be tried under the Financial Services and Markets Act, a UK Act of Parliament which created a new regulatory body for the financial services industry.

19 Read through the article below quickly and answer these questions.

1 What is the profession of the appellant?
2 Which crime was he found guilty of?
3 What did he know about the company in question?
4 How much profit did the appellant make on the sale of the shares?

FSA fines auditor for market abuse

The Financial Services and Markets Tribunal has upheld a Financial Services Authority (FSA) case against Mr Arif Mohammed, a former Pricewaterhouse Coopers (PwC) audit manager, who was fined £10,000 for committing market abuse. This is the first time the market abuse provisions in the Financial Services and Markets Act 2000 (FSMA) have been the subject of a Tribunal decision.

Mr Mohammed bought shares in Delta plc, a London Stock Exchange listed electrical and engineering services company, based on his knowledge that the company intended to sell its electrical division. Mr Mohammed became aware of this confidential information because Delta's electrical division was an audit client of PwC, and Mr Mohammed worked on the company's audit.

In July 2002, Mr Mohammed first became aware of the proposed sale of Delta's electrical division. He was told that this information was confidential and not to be discussed with company officials. Although Mr Mohammed began handing over the responsibility for elements of Delta's audit in September 2002, he remained on the audit team assigned to Delta throughout the period leading up to the disposal announcement. In particular, Mr Mohammed remained responsible for planning staff to work on Delta and had reason to know about the sale's progress because of its impact on resource planning.

At the end of November 2002, Mr Mohammed was aware that the sale process was ongoing and was getting close to agreement. Based on this information, he purchased 15,000 shares in Delta on 29 November 2002 at 80p each. Delta announced the disposal on 9 December 2002, and Mr Mohammed sold his shares the following day at 105p each, making a profit of £3,750.

The Tribunal held that the information Mr Mohammed had about the proposed deal was sufficient and precise enough to be considered as relevant information according to the market abuse provisions.

20 Read the article again, and decide whether these statements are true (T) or false (F). If a statement is false, correct it.

1 The case was heard before the European Court of Justice.
2 Mr Mohammed was sentenced to imprisonment for his crime.
3 The defendant was not at all responsible for the audit of the company.
4 He knew about the progress of the planned sale.

21 Find words in the text that mean the same as these underlined words.

1 <u>secret</u> information
2 to <u>buy</u> shares
3 <u>suggested</u> deal
4 the Tribunal <u>decided</u>
5 market abuse <u>laws</u>

22 What do you think can be done to prevent cases of market abuse (like the one described above) from occurring?

REFERENCES

LEGAL ENGLISH

Books: suggested reading on criminal law

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- *Droit Anglais et Droit Americain.*M. Harvey, C. Kirby-Legier, M. Charret-Del Bove. Ed. Armand Colin. Chapter 3
- *Introduction to International Legal English.* A. Krois-Lindner & M. Firth. Ed. Cambridge Translegal. Chapter 4
- *The English of Law: England & Wales.* Ed. Belin Sup langues. Chapter 6
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