

**CRIMINAL
LAW CASES**

<p>SEALS</p>	<p>Double effect principle. Question: Did the doctor administer the drug knowing that there was a substantial risk of death, but only intends to relieve pain and administers it in a reasonable and proper way for that purpose?</p>
<p>LEE</p>	<p>TDLR: About unlawful act' under s 160(2)(a) - does it have to be dangerous?</p> <p>Facts: Korean women got involved with Korean church, performed exorcism on her. Called it a deliverance, rid the body of demons and evil spirits. She died. Defendant charged with assault (intentional application of force, manual strangulation) and negligent manslaughter under s160(2)(b). Told at no point that Lee intended to cause the victim any harm.</p> <p>Key decision:</p> <ul style="list-style-type: none"> • A conviction under s160(2)(a) means an unlawful act is objectively dangerous • Unlawful act must cause the death – meaning it is likely to be objectively dangerous/more than trivial. • Requirement of objective dangerousness is a common law gloss on the definition. • In this case: Open to jury to decide whether act that killed her was objectively dangerous. <ul style="list-style-type: none"> ○ Judge should direct jury to look at everything as a series of actions – not the final act causing death in isolation. ○ Jury should be satisfied that this requirement is met. <p>Count two: Consent is not a defence, but it may be taken into account if considering whether there has been a major departure.</p>
<p>Q</p>	<p>Facts: Mother had a longstanding opiate addiction, was on medication in which she wasn't allowed to drink alcohol as it made the sedative effects of it stronger. Mother fell asleep on baby whilst breastfeeding her. Baby died. Mother charged with manslaughter of the paper and convicted on that charge. Doctor did not believe alcohol taken was significant.</p> <p>Issue: On appeal. Question is whether the Crown proved a major departure from the standard of care expected of a reasonable person and whether any such major departure was a substantial and operative cause of the death of the appellants daughter?</p> <p>Key Decision: <i>Hamer</i> – Objective test, state of mind.</p> <ul style="list-style-type: none"> • <i>Hamer:</i> Objective test – whether a person has fallen below standard of care of a reasonable person with legal duty, and whether failure was a major departure. Doesn't care about defendants individual characteristics or state of mind. • How may the state of mind be relevant: <ul style="list-style-type: none"> ○ It can't help you, the test is an objective one. But if you did appreciate the risk – it can help us more readily satisfy gross negligent to a criminal degree. • <i>Hamer:</i> Evidence of deliberate omissions accompanied by foresight of risk might be material in determining whether there was a major "departure" under s150A. • Personal characteristics don't modify the "universal" standard of care <ul style="list-style-type: none"> ○ If there are disabilities, courts direct this to the "lawful excuses" element in s160(b). But it has to be an excuse that is known or recognised by the law. <p>Causation (majority):</p> <ul style="list-style-type: none"> • Decided it was an unsafe verdict. Kind of confusing but key thing to know is that it is important to figure out what was the omission, what was the major departure, and was that causative of death? It didn't happen in this case. <p>Causation (Minority):</p> <ul style="list-style-type: none"> • Wouldn't have allowed it as well, whereas majority had just said it was unsafe.

	<p>Process:</p> <ul style="list-style-type: none"> • Other background events that led to omissions are relevant evidentially because they gave the settling in which person chose to act or omit to act. For causation however, there still needs to be link between particular act and omission, and the death.
<p>PERRY</p>	<p>Facts: Group plan to rob drug dealer, held mouchette to throat and demanded his drinks. Victim took fright and hid in shallow water-logged levee. Group abandoned search for him and a day later his body had drowned. They knew that when he took meth he got paranoid and a bit fearful, certainly the female defendant knew. Last moments noted as “sheer terror”.</p> <p>Charges: Manslaughter with intent to rob (but about s160(d)).</p> <ul style="list-style-type: none"> • Unclear who were principles and who were parties. <ul style="list-style-type: none"> ○ Doctrinally, in situations like these we don’t care. They were all participating relatively equally. It can be difficult to know which was the fatal act and which person it belonged to. As long as we can prove it was one of them, all the others must have been secondary parties. <p>Foreseeability:</p> <ul style="list-style-type: none"> • It’s not about foreseeability of death, it’s about the foreseeability of the victims response. <ul style="list-style-type: none"> ○ We need to be looking at response which was causative of death e.g the hiding, not the running away. <p>Causation: 2 parts</p> <ol style="list-style-type: none"> 1) Did fear of threat cause victim to behave in that way <ol style="list-style-type: none"> a. Refuse to follow English courts in having separate proportionality question. If something is foreseeable, is likely to be a proportionate response. 2) Was victims actions causative of death?
<p>SHADROCK</p>	<p>TDRL: Section 167(d) case. All about the meaning of ‘unlawful object’ – does it have to be criminal offence? How related does it have to be to fatal act?</p> <p>Facts: Bag snatch gone wrong. On the day of offending S decided to go at it alone (not like the plan). D chased him, he ran over her foot, she fell and suffered a fatal brain injury. His object was to steal her property, in trying to get away he hit her. Later asked his friends to hide the handbag and destroy the car.</p> <p>Issue: Did trial judge err in law by holding that s167(d) should be left to the jury as he assumed that escaping from immediate scene was enough to constitute being for an ‘unlawful object’? Was the act actually for an “unlawful object” – (looking at meaning of the word)? Discussion mainly around whether it needs to be criminal, and then if so how proximate must causative act be to unlawful object?</p> <p>Shadrock submission: The unlawful object needs to be a criminal offence. As soon as they had the bag the crime (theft) was over. Escaping itself is not part of the commission of the crime/an offence.</p> <p>Crown submission: Unlawful object doesn’t need to be a discrete offence. It is sufficient that it includes an object that is inextricably linked with the successful implementation and completion of the crime (unlawful object was trying to escape and that was linked with the successful completion of the crime). Certain English cases show that UO doesn’t need to end upon completion of a crime.</p> <p>Key points of decision:</p> <ol style="list-style-type: none"> 1) Does the ‘unlawful object’ need to be criminal? Shadrock says yes. Approach taken by Canada has merit and should be followed in NZ/

- a. England/Wales constructive malice definition: *In the course or furtherance of another offence.*
 - b. Canada: Must be serious criminal offence. BUT Crown argues that statutory context over there is very different. You just needed constructive knowledge of death for murder, so they put a gloss over 'unlawful object' to restrict number of cases which would qualify.
 - c. Authority which doesn't fit with this.
 - i. *Piri*: Kidnapped victim and left her overnight tied to a tree, died of exposure. **Just confused at how this was reconciled. In [46] say it was difficult then move on.**
 - ii. *Hakaraia*: Victim strangled to death with sheet causing death. Unlawful object said to be suppressing victim's cries.
 - d. Prefers approaches of *R v McKeown* and *Aramakutu*.
 - i. *McKeown*: UO to indecently assault. Acts which caused death were binding, gagging and hitting of victim.
 - ii. *Aramakutu*: UO causing damage to property. Act causing death was lighting of fire that caused house to burn.
 - e. Adams on Criminal Law: *"A criminal offence would seem to be required"*.
- 2) How proximate must causative act/fatal act be to unlawful object?
- a. Technically in a legal sense, essential elements of offence had been completed. Escaping, although not in itself a criminal offence was still essential to the successful completion of the offence.
 - i. Factual sense, could still be said crime was continuing as was persisting in attempt to alienate the handbag from the victim. But Yvette asks when does it stop continuing in a factual sense? If not when the legal elements were complete, then when?
 - b. Emphasis to be placed on the word '**for** any unlawful object does an act'. 'For' suggests something done directly in prosecution of, or to carry out a criminal offence – before or during, not after.
 - c. The fatal act must be committed so closely to the unlawful object that it can properly be said it forms part of that object. But then issue of how to define how close fatal act must be to constitute being part of that object?
 - i. Look to definition of proximity. Confirm that space and time are most obvious factors to take into account.
 - d. Depends on facts of the case whether unlawful object was still continuing. Court has to draw a distinction between unlawful object and its aftermath (if in aftermath then section cannot be satisfied). An escape from the scene of the crime may be either of the two depending on if fatal act is continuing or not. **Usual situation will be one where accused does an act causing death in the course of committing a crime and that act can properly be characterised as having been for the purpose of committing that crime.**
 - i. If a fatal act occurs once the offence has concluded, might not be murder under s 167(d).
 - ii. Will not merely be when legal elements of offence are complete.

In each case will be a matter of fact, the nature and elements of the other crime will be important.

LARKINS

- Facts: Secondary party was keeping watch for police during liquor store burglary, but principles weren't aware.
- Need **actual assistance** prior to or during the offence that actually occurs.
 - "Extra pair of eyes" – low threshold
 - Orthodox MR
- Timing:

- "...it is elementary that the act relied upon must occur prior to or contemporaneous with the commission of the offence."
 - On facts: "...the breaking and entry had been completed before the appellant came upon the scene. Accordingly, the conviction cannot stand."
 - Knowledge by principle required?
 - Awareness by P of assistance is not required, but makes it more difficult to establish.
 - Does the act need to result in actual assistance to the principle offender?
 - Defines it first: even if the look out never actually spots anybody, sound of mind it gives principle that they will be made aware of any situation is "unquestionably" actual assistance to principle offender.
 - Needs to be actual assistance: "the mere commission of an act intended to have that effect is insufficient".
- iii.

CLARKSON

TDLR: Encouragement

Facts: Audience at a gang rape, charged as a party. No evidence that he did anything other than passively watch.

Decision: Court acquitted him. If there had been any evidence that his presence had actually encouraged the principals or that he had indicated approval in any way, AR would have been made out.

RICHARDS

TDLR: 'Purpose' adds nothing to section 66(1)(b) liability. We can use both direct and oblique intention, doesn't matter if the defendant didn't desire the result.

Facts: Pharmacist supplied methadone to three other accused – originally did it as part of an authorised programme for assistance of addicts, was trying to keep group away from it. Was warned by Pharmaceutical Society that medication sold could be used at home for production of heroin, especially when supplied in large quantities. Three accused were giving to person who was using them for home-bake. Pharmacist found to be selling way more statistically than what other pharmacies of same size were. He suspected quantity he was prescribing would be passed on.

Issue: Is it incumbent on the Crown to go on to prove that Wentworth *wanted* heroin to be manufactured or is it enough to show that he knew that such manufacture would be the consequence of his actions?

Crown's submission: By supplying 400 Panadeine tablets to Moroney knew that they would be used for manufacture of heroin, which is a crime under s6(1)9 Misuse of Drugs Act.

Defendant's submission: Mere foreknowledge of the incidental criminal consequences of actions is not enough. Necessary that accused should want that particular criminal outcome. Defendant did not want heroin to be manufactured.

Key points of decision:

- Answer turns on meaning of 'for the purpose' (of aiding the principal to commit the crime) in s66(1)(b).
 - Defendant's support:
 - Glanville Williams: *...a person does not act with the purpose of producing a given result if he is wholly indifferent whether the result follows or not.* Williams is seeking to restrict the meaning of 'purpose' to only direct intention – wanting a desired outcome. Not oblique intention.

- *NCB v Gamble*: “The words ‘assist’ and ‘encourage’ necessarily import motive, i.e purpose or object...with the motive of endorsing the commission of the offence”.
 - **Read lecture notes on issue with this case, essentially was just very old.**
- *Pene*: “We cannot accept...that mere knowledge by an accused person that his conduct would be likely to encourage the commission of a crime automatically means that he has intended to encourage the commission...so as to be guilty as an abettor”. He was attempting to avoid contempt of friends.
- Court’s response:
 - *Pene*: Didn’t agree with interpretation. It turned on degree of certainty with which an accused must foresee result of his actions, rather than any requirement that he have any particular purpose or motive.
 - **Semantic reasoning:** *Glanville Williams*: Disagree with his arguments. Reject the distinction. There are usually a chain of purposes, few truly ultimate purposes. E.g You want power so you decide to kill but to do that you need a gun so you may need some money and take the money out of your wallet.
 - **Authorities:** Many treat intention and purpose as interchangeable.
 - **Policy:** If an accused deliberately embarked upon a course of action which he knew would have multiple consequences, he should not be permitted to pick and choose between them when it comes to criminal responsibility. I would treat an accused as acting “purposely” as to any consequence if he acted in order to effect either that consequence or another consequence which would involve that consequence”.
 - **Do not confuse purpose with motive.** Doesn’t matter if aim was to make financial profit. If you knowingly know the outcome, then you purposefully have caused it.

What this means is that we can use both direct and oblique intention for s66(1) liability, provided we apply the Woollen view around virtual certainty. ‘Purpose’ adds nothing to intention under s66(1)(b), a defendant may have more than one, and it can encompass both direct and indirect/oblique intention.

AHSIN

TDLR:

Facts: Murder case. Principle offender was a black power member. Appellants included Ahsin and Ranika. They were driving around, vehicle seen with flashing lights and shouting black power slogans. Some evidence that Rippen who was in their car, had got a knife and was threatening some people. Stopped victim wearing red hoodie, decided this was their guy as they wanted to intimidate members of the mongrel mob. Ahsin was driving the car at this point, she and other woman were shouting at the victim whilst doing a U turn in the car. Whole group went out to attack him whilst principle went and grabbed axe from the car. Wasn’t clear on the facts, but one did shout ‘that’s enough lets go’. Victim was struck twice and left on the ground, later died.

Section 66(2)

Defendants submission: Purpose was to go drinking and have a good time. Wasn’t a common unlawful purpose. BUT even if there was, she didn’t know about weapons and shouted at them saying to leave when they started beating the victim. Even if there was she wasn’t apart of it.

Crown submission: D's had common intention with purpose of intimidating and assault people who they believed to be Mongrel Mob members or their associates. Appellants were aware that two male defendants had weapons and that death of person assaulted was probable consequence.

Key Decision:

- Kind of just restates legislation, that it can be used for offences which are not intended by the party, and ones who are.
- The offence that was intended by the participants falls naturally within the scope of the words "every offence committed by any one of them...that...was known to be a probable consequence.
- In order to understand that the offence was a probable consequence of carrying out the common purpose – requires foresight of both the physical and mental elements of the essential facts of the offence.
- ? Kind of still confused as to what they decided on the facts?

Withdrawal:

Defendants submissions: Ahsins actions at the time of the attack – telling people to get back in the car, demonstrated that she did not want to be apart of what was happening, nor did she want it to go further.

Crowns submission: Shouted words do not indicate withdrawal, but constitute actual assistance by Ms Ashen as a lookout and person concerned with helping the group to avoid detection and arrest.

Issue: Whether withdrawal is within the elements of party liability? Or a separate defence?

Key Decision:

- 1) True defence, not part of the AR analysis
 - a) S66(1): AR is complete when actual assistance or encouragement, counsel, procurement or incitement occurred. On this approach, the completed AR is not negated by subsequent acts of withdrawal. Therefore must be a true defence.
 - b) S66(2): AR complete at time D forms or joins common purpose, contingent on commission of offence by principal offender in prosecution of that purpose.
- 2) Rationales underlying withdrawal defence:
 - a) May prevent commission of a crime, therefore avoiding harm
 - b) Principle may become dissuaded and frustrated if one party has withdrawn.
 - c) May indicate lack of entrenched criminal purpose, less future dangerousness – may reduce blameworthiness or future risk of offending
 - d) The law should encourage persons who participate in criminal arrangements to change their mind and take steps to prevent the crime reaching consummation. It gives them an incentive.
- 3) Scope of the defence: From PINK – see page 113. Judgement is extremely contextual, Pink just gives us four conditions which should be met before it should be available.
 - a) Context: From various different authorities
 - b) Gauthier: Mother pulls out of murder-suicide pact, she had pre-agreed to plan with her husband, obtained the drugs. Although "some evidence" of withdrawal, due to her role she had to have done something more e.g call authorities, hide the medication, taken children away. **Proportional to the role played in establishing the offence.**
 - c) In New Zealand there are 2 requirements:
 - i) Words or actions that demonstrate clearly....
 - ii) Must take reasonable and sufficient steps ...
 - (1) What is done to withdraw must be proportionate to impact of assistance earlier given.
 - (a) If their involvement consisted solely of words – clear communication may be enough to undo their involvement

- (b) If it consisted of actions of assistance, further reasonable steps to undo that assistance or otherwise prevent the crime will be required for there to be valid withdrawal. E.g retrieval of weapon.
- (2) Time is relevant: Must occur at a time when it is possible for party either to undo his or her previous assistance or prevent the crime
- (3) Sufficiency: About potential of what was done to be effective in circumstances. Ties in with time again as if done just beforehand? Most likely not. So once things get to a particular timepoint, unlikely to withdraw. A little window.
- iii) Some actions will be relevant to both limbs.
 - (1) Clear communication may demonstrate both withdrawal and step towards prevention (dissuading).

4) In this case:

- a) 1st requirement: Evidential basis found which jury could decide that she did disengage from assistance. Her words were capable of bearing different meanings. Ultimately left to the jury, but judge appeared to believe that her words were consistent with intention to be a 'look out'.
- b) 2nd requirement: No evidential basis found. Evidence does not show her actions amounted to reasonable and sufficient steps. Were purely oral, and were not proportional to her considerable prior involvement in driving and positioning the car for the attack. What she shouted was was not likely to be effective in the situation either. She could have driven off – that may have been capable of influencing attackers.
 - i) There wasn't much she could do. Look at time etc. anything would probably not undo it.

TOMKINS

Facts: Three wanted to rob a taxi driver, arming themselves with knives and a BBQ fork. Once they robbed him, made him drive to deserted spot, took him out of the car, into a bush, Tomkins took his glasses while the other guy stabbed him twice. Claimed that **weapons were used to scare not to kill, they did not intend to kill the driver.**

Key decision:

- *Reid*: If you take weapons with you on an enterprise which envisaged some degree of violence, even though nothing more than to cause a fright, each participant can be convicted of manslaughter, even if acquitted or murder.
- Murder, manslaughter or nothing. But manslaughter is always open. Not a case of murder or nothing.
 - Still took part, but if he didn't think that weapons would be used intentionally for killing, it may be unduly harsh to convict him of murder.
- c) When you have weapons for fear, you must have realised that risk of bringing weapons could result in death.
 -