

Chapter 2

In Khan and Khan ([1998] Crim LR 830 (CA)) the defendants supplied a 15-year-old girl with some heroin. It seems that she had not tried the drug before. She took twice the normal amount and collapsed in a coma. The defendants left without summoning medical help and she died. Do you think the defendants had a duty to summon help? (Without deciding the question the Court of Appeal suggested that it 'may be correct that such a duty does arise'.)

If one wanted to argue that the dealers did owe a duty of care, perhaps the best argument would be to rely on the decision in *Miller*. There it was held that if a person creates a danger to others they are under a duty to stop that danger materialising. Here, a case could be made for saying that by selling the drugs the dealer was setting off a chain of events which led to the victim falling into a coma. The dealers were aware this had happened and so were under a duty to act reasonably and summon help to prevent death. This argument assumes that it would be reasonable to summon help. It could be said that as summoning help would reveal the illegal activities of the drug dealers and open them up to prosecution it would not be reasonable to expect them to do that. However, it might be replied that help could be summoned, without revealing their identity. Another argument against there being a duty of care is that the activity of taking drugs is one of which both parties are aware of the risks and therefore the victim in taking drug assumes responsibility for any harm that results. Although it might be said, that in such a case, both parties can be found to have responsibility for the resulting harms of the drug taking.

In *R v Evans* [2009] EWCA Crim 650 a mother and friend who gave her daughter drugs were convicted of gross negligence manslaughter after not summoning assistance when the daughter collapsed. It is not clear from the decision how significant it was that the daughter was still a minor. The fact that the friend was convicted suggests that the courts are willing to find a duty of care to summon help, based on supply, at least in a case where the person taking the drugs is in some sense vulnerable.

Lord Goff in Bland stated: 'I also agree that the doctor's conduct is to be differentiated from that of, for example, an interloper who maliciously switches off a life support machine because, although the interloper may perform exactly the same act as the doctor who discontinues life support, his doing so constitutes interference with the life prolonging treatment then being administered by the doctor. Accordingly, whereas the doctor, in discontinuing life support, is simply allowing his patient to die of his pre-existing condition, the interloper is actively intervening to stop the doctor from prolonging the patient's life, and such conduct cannot possibly be categorized as an omission.' Does it make sense that a happening which is regarded as an action when done by one person (an interloper) is regarded as an omission when done by another (a doctor)?

At first sight the notion that the same thing when done by one person is an act, but when done by another is an omission is absurd. Indeed this scenario is one that is often referred to by critics of the distinction between acts and omissions. However, Lord Goff's view could be justified in two ways. First, it could be said that in assessing whether a person has done an act or an omission their contribution to what has happened must be looked at

in the round. Here, when Tony Bland first arrived in hospital the doctors put him on a life support machine.

In switching the machine off, the doctors are returning him to the position he was in when he arrived in hospital. In other words the total effect of what the doctors did was nothing and so it can be described as an omission. The same argument cannot be used for the interloper. A second justification is to regard the life-support machine as providing on-going support and switching off the life support machine is equivalent to the doctor deciding to stop giving mouth-to-mouth resuscitation. It can therefore be regarded as an omission.

Marion slashes Steve's face with a knife. Steve is a vain model and is so distressed with the resulting scar that he commits suicide. Has Marion caused Steve's death? Consider how the cases of Roberts, Blaue, and Dear could be relevant to this case.

In *Kennedy* it was explained that a free voluntary act breaks the chain of causation. If Steve's act was a free voluntary and informed one then Marion would not have caused the death. The key question is whether the suicide was voluntary. In *Wallace* the victim was in such terrible pain that the Court of Appeal were willing to accept her request for euthanasia was not voluntary because it was not 'unfettered'. This might be contrasted with *Kennedy* where the victim was a drug user and so strongly desired the drugs, but the House of Lords seemed to assume he was still acting voluntarily.

If Steve's act was not free voluntary and informed (e.g. because he was so overcome with emotion he did not know what he was doing then the *Roberts* case would apply. Following the *Roberts* decision the key question for the jury would be whether Steve's act in cutting himself was reasonably foreseeable. If it was not it would break the chain of causation, but if it was reasonably foreseeable Marion would be said to have caused the death. The *Williams and Davies* decision would require the jury to take into account Steve's age and characteristics in considering whether his reaction was reasonably foreseeable. In *Wallace* the jury at the retrial decided the defendant did not cause the victim's death. This might have been because they decided that it was not reasonably foreseeable that the victim of an acid attack would seek euthanasia.

The *Blaue* decision could be used to make an argument that Marion must take 'her victim as she finds him'. Even though Steve's reaction was unforeseeable, so too was the victim's in *Blaue*, but that did not prevent the court from finding the defendant to have caused the death. However, it would be possible to distinguish *Blaue*. There the decision of the victim was to refuse medical treatment, rather than do an act which worsened their medical treatment. In this case Steve's action worsened his medical condition. It might, alternatively, be said that in *Blaue* the religious nature of the decision brought in special policy considerations which are not applicable here and so the case is not relevant.

In *Dear* the Court of Appeal relied on the rule that you must take the victim as you find him in a case where the victim had made the wounds worse. The prosecution could rely on this decision to argue that Marion likewise is responsible for what she has caused Steve to do. However, the defence can argue that unlike in *Dear*, the victim here created new wounds rather than worsening those inflicted by the defendant.