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CRIMINAL LAW: GENERAL PRINCIPLES

Crime and civil wrongs distinguished

As we have indicated in Chapter 1 the distinction does not lie in the *nature of the act* itself. For example, if a railway porter is offered a reward to carry A's case and runs off with it, then the porter has committed one crime, that of theft, and two civil wrongs, i.e. the tort of wrongful interference and a breach of his contract with A. Again, a signalman who carelessly fails to operate signals so that a fatal accident occurs will have committed one crime, i.e. manslaughter, because persons are killed, and two civil wrongs, the tort of negligence in respect of those who died and those who are merely injured, and a breach of his contract of service with the employing rail company in which there is an implied term to take due care. It should also be noted that in this case the right of action in tort and the right of action in contract are vested in different persons.

The distinction does depend on the *legal consequences* which follow the act. If the wrongful act is capable of being followed by what are called criminal proceedings, that means that it is regarded as a crime. If it is capable of being followed by civil proceedings, that means that it is regarded as a civil wrong. If it is capable of being followed by both, it is both a crime and a civil wrong. Criminal and civil proceedings are usually easily distinguishable, they are generally brought in different courts, the procedure is different, the outcome is different and the terminology is different. A major consequence of classifying proceedings as criminal is that the burden of proof is on the Crown.

Terminology and outcome of criminal and civil proceedings

In criminal proceedings a prosecutor prosecutes a defendant. If the prosecution is successful, it results in the conviction of the defendant. After the conviction the court may deal with the defendant by giving him a custodial sentence, e.g. prison or some other form of detention (see Chapter 4) or a non-custodial sentence, e.g. a supervision order under a probation officer or a community order imposing e.g. an unpaid work requirement. In rare cases the court may discharge the defendant without sentence.

As regards *civil proceedings*, a claimant *sues* (brings an action against) a defendant. If the claimant is successful, this leads to the court entering judgment ordering, for example, that the defendant pay a debt owed to the claimant or damages. Alternatively, it may require the

defendant to transfer property to the claimant or to do or not to do something (injunction) or to perform a contract (specific performance). Some of these remedies are legal, others equitable. The matter of remedies for breach of contract and for torts has already been dealt with in detail in the chapters on those topics.

Nulla poena sine lege – no punishment unless by law

This important maxim means that a person should not be made to suffer criminal penalties except for a clear breach of *existing* criminal law, that law being precise and well defined.

The maxim thus prohibits:

(*a*) the introduction of new crimes which operate retrospectively under which a person might be found guilty of a crime for doing an act which was not criminal when he did it;
(*b*) wide interpretation of precedents to include by analogy crimes which do not directly fall within it. Thus the extension of the criminal law in the way, for example, in which the civil law of negligence has been extended (see Chapter 21) is undesirable;
(*c*) the formulation of criminal laws in wide and vague terms.

The last rule has in general terms been observed in England, with perhaps the major exception of the law of conspiracy under which there has been a tendency to charge persons with criminal conspiracy rather than with specific criminal offences. Thus a conviction might be obtained for conspiracy to do an act even though there were doubts as to whether the act was or ought to be criminal.

Under ss 1–5 of the Criminal Law Act 1977, the offence of conspiracy at common law is abolished and the new statutory offence of conspiracy is restricted to agreements to commit criminal offences, though the common-law offences of conspiracy to defraud and conspiracy to corrupt public morals or outrage public decency are retained. The consent of the Director of Public Prosecutions to mount a prosecution is required.

The purpose in retaining conspiracy to defraud at common law is that it enables the courts to keep up with the increasing methods of fraud which may outpace legislation such as the Theft Act 1968 which may not cover them. Acts outraging public decency are offences in themselves as the Court of Appeal decided in *R* v *Gibson* [1991] 1 All ER 439, where the defendant exhibited earrings made from freeze-dried human foetuses of three to four months' gestation. In view of the fact that acts outraging public decency are crimes in themselves a conspiracy to outrage public decency would also be covered by s 1 of the 1977 Act as a conspiracy to commit a criminal offence.

Woolmington v *DPP*, 1935 – Burden of proof in crime (**506**)
Shaw v *DPP*, 1961 – No punishment except for breach of existing law (**507**)

Constituent elements of a criminal offence

The commission of a crime necessarily involves two elements:

(*a*) the *actus reus* (guilty act); and
(*b*) the *mens rea* (guilty mind).

Therefore, a guilty act does not make a person guilty of crime unless the mind is guilty and vice versa. The essential key to proving criminal charges generally is to show that the defendant had the necessary state of mind at the required time. The coincidence of the state of mind with the criminal act is crucial. The exception to this rule of mental attitude is a group of offences referred to as crimes of strict liability.

The *actus reus*

The defendant's conduct must in general be *voluntary*. If a person is made to act, there is no *actus reus*. Sir Matthew Hale says in his treatise on the criminal law entitled *Pleas of the Crown* written in 1682: 'If A takes the hand of B in which is a weapon and therewith kills C, A is guilty of murder but B is excused.' Duress as by threats which cause a person to act is not in fact regarded as involuntary conduct, but may be a defence for some crimes (see further Chapter 25).

In addition, if a person acts instinctively in response to some stimulus and in so doing commits a criminal offence, he will not be liable. A famous example was given in *Hill* v *Baxter* [1958] 1 All ER 193 in connection with a prosecution for dangerous driving where the court said that a person would not be guilty of such an offence if 'the car was temporarily out of control by his being attacked by a swarm of bees'. It will be found, however, that in the case of some statutory offences no voluntary act is required.

The act must be causative

In order to convict a person of a crime, it is necessary to show that the act which he did was the *substantive cause of the crime*. In this connection, it should be noted that the accused takes his victim as he finds him so that the abnormal state of the victim's health or his or her age will not normally excuse a person who by his acts has accelerated the death of such a victim.

However, the Court of Appeal ruled in *R* v *Bollom* [2004] 2 Cr App R 50 that, in considering whether injuries amounted to grievous bodily harm and not actual bodily harm, the age and health of the victim should be brought into account. Thus, injuries to a baby or young child or an old person might well constitute grievous bodily harm whereas they would not in the case of a young adult in the fulness of health. (See further Chapter 24.)

R v *Towers*, 1874 – Need to prove causation (**508**)

R v *Hayward*, 1908 – Accused cannot successfully plead the victim's state of health (**509**)

Intervening acts and events

It may be that between the initial act of the defendant and the criminal event with which he is charged a new act or event occurred and contributed to the criminal event. The defendant will nevertheless be liable unless the intervening event was unforeseeable and would have brought about the consequence on its own.

Sometimes the intervening act is that of the victim but the accused will still be guilty if it was reasonably foreseeable that the victim would act in the way he did as a result of the behaviour of the accused. Finally, the intervening act may be the improper medical treatment of an injury inflicted upon the victim by the accused. Here the general rule is that the

court will be reluctant to blame doctors and other medical personnel for a death where the condition which they were called upon to treat was brought about by the unlawful act of the accused.

R v *Curley*, 1909 – Intervening act of victim (**510**)
R v *Smith*, 1959 – Improper medical treatment (**511**)

It should be noted that it is not necesary for the Crown to establish which of the accused's actions caused the death. Thus in *Attorney-General's Reference (No 4 of 1980)* [1981] 1 WLR 705 the accused pushed his girlfriend downstairs and, believing her to be dead, dragged her upstairs by a rope around her neck, cut her throat, and dismembered and disposed of the body. He was charged with manslaughter and it was held by the Court of Appeal that he could be convicted, provided the jury was satisfied that one of the actions did cause the death, notwithstanding that it was impossible to say which of the culpable acts did so.

Omissions or failure to act

In general terms, a mere failure to act cannot lead to criminal liability. However, there may be liability for an omission in the following situations.

Moral obligations arising from particular relationships

Sometimes where a person is in a particular relationship with another which is either imposed by law such as parent or child or voluntarily assumed as where A is looking after an old aunt, the relationship may give rise to an obligation to act. Failure to discharge the responsibilities arising from the relationship may result in criminal liability at common law.

R v *Instan*, 1893 – Liability for omissions at common law (**512**)

While *R* v *Instan* (1893) and the cases set out in the comment to it illustrate the position at common law, the statutory position should also be noted. The Domestic Violence, Crime and Victims Act 2004 closes a loophole in the law that could allow those jointly accused of the murder of a child or vulnerable adult to escape liability by remaining silent and blaming each other. This has occurred where husband and wife or partners have adopted this approach where a child or vulnerable person has been the victim. The Act now puts legal responsibility on adult household members who have frequent contact with a child or vulnerable adult *to take reasonable steps* to protect that person if they knew, or ought to have known, they were at significant risk of serious physical harm. Persons can be guilty *for not doing so*.

Contractual duties

A person may incur criminal liability because a contract, e.g. of employment, places upon him a duty to act. The duty is not confined to the other party to the contract but may extend also to third parties.

R v *Pittwood*, 1902 – A crossing gate is left open (**513**)

Previous conduct creating a dangerous situation

Where the defendant has by his previous acts created a potentially dangerous situation and later comes to realise this, he has a duty to act to prevent the danger.

> *R* v *Miller*, 1983 – A smoking mattress (**514**)

Duty to act under statute

Some modern statutes make failure to act a crime. For example, s 170 of the Road Traffic Act 1988 makes it an offence if those involved in road accidents fail to report the accident to the police within 24 hours or give relevant details to any other person who being at the scene of the accident reasonably requests them. It is necessary, however, that personal injury is caused to a person other than the driver of the vehicle or to an animal other than one in the driver's vehicle or in a trailer being pulled by him or her.

A further example is provided by the decision of the Queen's Bench Divisional Court in *Greener* v *DPP* (1996) *The Times*, 15 February. G's Staffordshire bull terrier was chained up in his garden. It escaped into a nearby garden and attacked a child. Section 3(3) of the Dangerous Dogs Act 1991 states that an offence is committed if the owner 'allows' a dog to enter a private place where it is not permitted and it then injures some person. G submitted that the section required a mental element and, since he had not taken any positive step to release the dog, he was not guilty. It was held that since the section did not require intention, negligence or knowledge, but was a strict liability offence the offence could have and had been committed by an omission to take adequate precautions to keep the dog in.

The *mens rea* – generally

The *actus reus* must be accompanied by an appropriate state of mind which is referred to as *mens rea*. The *mens rea* and the *actus reus* must coincide in order to constitute a crime. Before looking at the different states of mind involved it should be noted that as in the law of torts *motive*, i.e. the reason why the defendant did the act, is irrelevant in regard to his guilt or innocence if his direct intention was to commit the offence.

> *Chandler* v *DPP*, 1962 – Impeding the operation of an airfield (**515**)

The following states of mind are relevant.

Direct intent

This occurs where there exists in the mind of the defendant *a desire* to commit the crime, as where A shoots at B foreseeing and desiring and wishing that B will be killed, or as where A deliberately fails to feed an aged parent in the hope and expectation of bringing about that parent's death.

Oblique intent

Here *the consequence is not desired* as such. The defendant may even hope that what happened would not happen but has nevertheless gone ahead with the harmful activity, in what one is

tempted to say is a reckless fashion. Indeed, the concepts of oblique intent and recklessness as states of mind are at times quite close and not readily distinguishable. In homicide cases an oblique intent will normally result in a conviction for manslaughter and not murder, and the major change brought about by modern case law is that intent is no longer established by a kind of objective foresight of consequences as is liability in tort, although the mental element of recklessness may be.

R v *Maloney*, 1985 – Larking with guns (**516**)

Recklessness: *Cunningham* and *Caldwell*

In some crimes it is necessary to find a direct intent. Included here would be murder and wounding with intent under s 18 of the Offences Against the Person Act 1861 (causing grievous bodily harm). The House of Lords has reaffirmed that to establish an offence under s 20 (malicious wounding) it is necessary for the prosecution to prove either that the appellant intended to or that he actually foresaw his act might cause physical harm, even if only of a minor character. This is oblique intent (see *R* v *Savage* [1991] 2 All ER 220).

In other cases, e.g. criminal damage and rape, intention or recklessness is enough. So far as manslaughter is concerned, either an oblique intent or recklessness would seem to suffice. The line between oblique intent and recklessness in the decided cases is, as we have seen, often very difficult to draw. Recklessness, so far as the earlier cases were concerned, was to be decided *subjectively*, i.e. the defendant must have appreciated the risk which is close to oblique intent. *Objective* tests, i.e. the defendant *ought* to have appreciated the risk, were to be reserved for the civil law. However, in more recent times the courts have developed an objective test for recklessness though at the moment this test seems to be applied largely in cases involving criminal damage, though a fairly recent case applied it to manslaughter.

R v *Cunningham*, 1957 – Recklessness: the subjective test (**517**)
R v *Caldwell*, 1981 – Recklessness: the objective test (**518**)

The two tests are therefore available and it seems that the *Cunningham* test survives in cases of rape (see Chapter 24) while the *Caldwell* test is to be found in statutory crimes such as criminal damage and in motor manslaughter now referred to as causing death by dangerous driving (see Chapter 24).

However, in the crime of rape the recklessness required is as to the victim's non-consent to the act of sexual intercourse, which places such recklessness virtually in a category of its own.

Gross negligence

In modern law the objective test of recklessness has not progressed beyond the *mens rea* for causing death by dangerous driving (see Chapter 24) and criminal damage. It was rejected in *R* v *Adomako* (1994), a case of involuntary manslaughter, in favour of a 'gross negligence' test (see Chapter 24), in a crime now referred to as gross negligence manslaughter.

The Road Safety Act 2006 creates a new offence of causing death by careless driving, with a penalty of up to five years' imprisonment. The definition of careless driving in the Act puts it beyond doubt that causing death by reckless or careless driving (the bad driving offences), can be used by the courts as an alternative to manslaughter.

Negligence

It is extremely rare to find that negligence is a state of mind for a criminal offence. However, the fact that a person has not been negligent can be a defence in some statutory crimes. For example, where foreign matter has got into food it is a defence for a person involved in its sale to show that he acted *with due diligence* to prevent the commission of the offence (Food Safety Act 1990, s 21). Thus only persons who are negligent will be successfully prosecuted.

Where intent is transferred

Provided the defendant has the necessary *mens rea* and commits the intended *actus reus* it does not matter that the victim is not the person he intended to harm. However, the *mens rea* for one offence cannot be transferred to another.

R v *Latimer*, 1886 – A different victim (**519**)
R v *Pembliton*, 1874 – A different crime (**520**)

The rule of transferred malice can also be relevant in regard to the liability of accessories or secondary parties to crime. Thus, if A incites B to attack C, A will be liable for the attack along with B. If, however, B decides to attack someone else instead, A will not be liable for that attack. If in trying to attack as by throwing a stone or chair at him B injures D, A will be liable for the attack on D.

Mens rea and *actus reus* must coincide

There must be a coincidence of these two elements. However, it may be that although at the outset the act did not carry with it the necessary *mens rea* this came later during what the court regards as a continuing act or one transaction.

It is not necessary that the requisite state of mind should remain unaltered throughout. A later change of mind will not prevent the commission of an offence. Thus, if A steals B's goods with the intention to deprive him permanently of them, A will still commit the offence of theft even if he later changes his mind and gives the goods back to B.

In regard to the concept of the continuing act, in *Fagan* (see below) the *actus reus* preceded the *mens rea*, whereas in *Thabo Meli* (see below) the *mens rea* preceded the *actus reus*.

Fagan v *Metropolitan Police Commissioner*, 1968 – A car on a policeman's foot (**350**)
Thabo Meli v *R*, 1954 – A killing in one transaction (**521**)

Mens rea in statutory offences

The principles applied in regard to *mens rea* where the offence is set out in a statute are somewhat different from those applied in common-law offences. Some statutory criminal offences are said to be offences of *strict liability* which means that there may be a need only to prove the commission of the offence, the state of mind of the defendant being immaterial. They are usually regulatory offences where no major moral issue is involved, but where there is some social danger or concern involved in the regulated conduct.

The topic may be considered under the headings which follow.

Mens rea implied

As Lord Reid said in *Sweet* v *Parsley* (1969) (see below), 'There has for centuries been a presumption that Parliament did not intend to make criminals of persons who were in no way blameworthy in what they did. This means that whenever a section of an Act is silent as to the requirement of *mens rea* there is a presumption that, in order to give effect to the will of Parliament, we must read in words appropriate to require *mens rea*.'

Sweet* v *Parsley, 1969 – Statutory offences: presumption of requirement of *mens rea* (**522**)
R* v *Tolson, 1889 – A bigamous wife (**523**)

However, as we have seen, statutes which regulate public conduct and which cannot be enforced effectively if *mens rea* is required, e.g. pollution of the environment, are sometimes excepted from the rule that statutory crimes require *mens rea* by implication.

Alphacell* v *Woodward, 1972 – Strict liability for pollution (**524**)
Cundy* v *Le Cocq, 1884 – Selling liquor to a drunk (**525**)

Particular words connoting *mens rea*

The use of words such as 'maliciously', 'knowingly', 'wilfully', 'permitting' and 'suffering' in a statute is usually an indication that *mens rea* is required to establish the offence. However, the absence of such words does not necessarily mean that no *mens rea* is required, as we have seen from cases such as *Sweet* v *Parsley* (1969), above.

Gaumont British Distributors Ltd* v *Henry, 1939 – Where a record was not knowingly made (**526**)
R* v *Lowe, 1973 – A charge of wilful neglect (**527**)
Somerset* v *Wade, 1894 – Permitting drunkenness (**528**)

Vicarious liability

If the offence is one which does not require *mens rea* so that it is an *absolute offence*, an employer may be liable where an employee commits the offence in the course of his employment. It is no defence for the employer to say that he had no *mens rea* because none is required.

However, if the offence requires *mens rea* as where, for example, it is one involving 'permitting', an employer will not be liable vicariously if it is the employee who does the permitting.

Griffiths* v *Studebakers Ltd, 1924 – Vicarious liability: an absolute offence (**529**)
James* v *Smee, 1955 – Vicarious liability: where *mens rea* is required (**530**)

If a person carries on a business which requires a licence which is issued subject to the observance of certain conditions, he cannot escape liability by delegating the duty of seeing that those conditions are observed to either an employee or a stranger. However, where the offence requires *knowledge*, i.e. *mens rea*, the holder of the licence will not be liable for the acts of his delegate unless the delegation is of the whole function of the licensee as where he leaves the premises to take a holiday so that the management of the business is in the hands of the delegate.

An employer cannot, it would appear, be liable vicariously for *aiding and abetting* an offence unless he has knowledge of the offence. The knowledge of an employee in regard to such a charge is not imputed to the employer in order to make him liable.

Vane v *Yiannopoullos*, 1965 – Delegation of duties (**531**)
Ferguson v *Weaving*, 1951 – Aiding and abetting (**532**)

Finally, there is no vicarious liability for an offence which is merely attempted but not completed (*Gardner* v *Ackroyd* [1952] 2 QB 743).

The mental element – corporations

In October 1987 an application was made for leave to apply for judicial review against the decision of the coroner for East Kent made on 18 and 19 September 1987 in the course of an inquest into the deaths of 188 people arising out of the capsize on 6 March 1987 of the *Herald of Free Enterprise* off Zeebrugge (see *ex parte Spooner and Others*; *ex parte de Rohan and Another* (1987) *The Times*, 10 October).

As we have seen, application can be made to the Queen's Bench Division for judicial review to correct an alleged defect in a proceeding in a lower court, tribunal or public body. The coroner had decided as a matter of law that:

(*a*) A corporate body could not be guilty of manslaughter.
(*b*) Where the individual acts or omissions of individuals employed by a corporate body or engaged in its management were insufficient to render them guilty of manslaughter, those acts or omissions could not be aggregated in order to make the corporate body guilty.
(*c*) The acts and omissions of the company, Townsend Car Ferries Ltd, were not the direct cause of the deaths.

The applicants, who were seeking to have the coroner's decisions reviewed, relied on three points made against the company in the Sheen Report published in July 1987 following an inquiry under Mr Justice Sheen. These were that:

(*a*) the company had failed to consider seriously a proposal to fit a warning light system on the ferry;
(*b*) five or six previous incidents of ferry doors being left open had not been properly reported and collated by the company; and
(*c*) it lacked any proper system to ensure that the highest standards of safety were observed.

In hearing the application for judicial review, Lord Justice Bingham said that he was prepared tentatively to accept that a corporate body was capable of being found guilty of manslaughter and Mr Justice Mann and Mr Justice Kennedy agreed.

However, the court refused leave to apply for judicial review. No substantial case had been made against named directors of the company and in any case the court was always reluctant to intervene in inquests.

So far the proceedings may seem to have been rather ordinary and straightforward but in fact the tentative acceptance of corporate liability for serious crime is far from innocuous. Up to now corporations have been convicted of crimes as follows:

(a) Those for which no guilty mind (*mens rea*) or even recklessness as to consequences is necessary. Some Acts of Parliament which regulate public conduct cannot be enforced effectively if an intentional or reckless state of mind is required, either in an individual or a corporation, e.g. statutory crimes relating to the pollution of the environment are sometimes excepted from the rule that even statutory crimes require *mens rea*, either expressly or by implication even though no state of mind is mentioned in the statute. An example is provided by *Alphacell* v *Woodward* (1972).

(b) Crimes which require a state of mind. Here, if the appropriate human decision-making organ within the company has the necessary state of mind the company may be found guilty. Examples are to be found in *Director of Public Prosecutions* v *Kent & Sussex Contractors Ltd* [1944] 1 All ER 119 where a company was convicted under statutory defence regulations for using a document with *intent* to deceive and for making a false statement, since those managing the company had the necessary state of mind.

Again, in *R* v *ICR Haulage Ltd* [1944] KB 551 the company was successfully prosecuted for a *common-law* conspiracy to defraud because of the state of mind of its managing director.

Finally, in *Moore* v *Bresler Ltd* [1944] 2 All ER 515 a company was successfully prosecuted for using a document with *intent* to defraud when the acts and state of mind were those of the company secretary and a branch manager, not those of the directors.

The requirements were clearly laid down by Lord Denning in *H L Bolton (Engineering) Ltd* v *T J Graham & Sons Ltd* [1956] 3 All ER 624 where he said:

> A company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such.

The above material represents what is called the *attribution rule* which means that the court must be able to indentify a guilty directing mind and will so that the crime can be attributed to the corporation. The rule was retained by the Court of Appeal in *Attorney-General's Reference (No 2 of 1999)* (2000) *The Times*, 29 February following a failed attempt to convict Great Western Trains of manslaughter after a major rail disaster at Paddington. The court felt unable to move to *personal liability* as a basis for corporate manslaughter.

(c) If there is to be a third category of corporate liability it would be based upon the fact that although no single individual is criminally culpable, he or she is nevertheless part of a complex and collective corporate mind which, when aggregated, gives the necessary culpability. These non-culpable people may be regarded by the courts in the future as part of a group lacking, say, a proper system of control and supervision to ensure observance of safety elements which, in a particular case, could lead to a conviction of the organisation involved – the company – for a crime as serious as manslaughter where death of a person or persons has ensued. Since manslaughter can be punishable by a fine, which is at the discretion of the

court and has no limit, there would be no problem in punishing the corporation (see now the Corporate Manslaughter and Corporate Homicide Act 2007 below).

If such a prosecution were successful, it would bring *Salomon* v *Salomon* (1897) (see Chapter 8) full circle. Since that case, people have accepted gradually that it is *companies that do things*, such as make contracts, obtain licences and so on. The last frontier is the corporate doing of a crime where the necessary state of mind is not derived from any particular individual but from all those individuals involved in the failure of the system in general. The admission by the court in *ex parte Spooner and Others* (above) that a corporate body is capable of being guilty of manslaughter suggests that if appropriate circumstances arise the law will take the final leap in the personification of corporate entities.

It has to be said, however, that the great leap forward did not take place in the *Spooner* case. The Director of Public Prosecutions decided in 1989 to prosecute in regard to the Zeebrugge disaster. The prosecution collapsed because the Crown was unable to prove that the senior officers involved had any specific duties and responsibilities for certain areas of safety which they had failed to carry out.

However, the development of the law relating to corporate manslaughter took a step forward in the case of *R* v *OLL* (1994) *The Times*, 9 December where the managing director of an activity centre was sentenced to three years' imprisonment for manslaughter following the deaths of four teenagers in the Lyme Bay canoe disaster on 22 March 1994. In a landmark decision, the judge (Ornall, J) also decided that Mr Kite's company OLL, formerly Activity Leasing and Leisure, was guilty of manslaughter and was fined £60,000. Mr Kite's sentence was later reduced to one year by the Court of Appeal. It should be borne in mind that it was fairly easy to regard Mr Kite as the company's *alter ego* because he was a majority shareholder and a director. OLL was virtually a 'one-person company'.

Following the above successful conviction, a jury at Bradford Crown Court returned a verdict in *Jackson Transport (Ossett) Ltd* (1994) (unreported) that the company and the company's former director, Alan Jackson, were guilty of manslaughter. James Hodgson, one of the company's former employees, was unlawfully killed by his employer in 1994 (so found the jury). He died after being sprayed in the face with chemicals which had solidified inside a tanker which he had been cleaning under steam pressure. There were no first aid facilities available and he was not given any protective clothing. Three months before Mr Hodgson had been hospitalised for three days following a similar incident, except on that occasion he had become exposed to dangerous fumes. This evidence demonstrated that the company, through its former managing director, Mr Jackson, was aware of the dangers but failed to do anything about them. The company was fined and Mr Jackson received a prison sentence of one year.

It will have been noted that a company can be liable for an offence of strict liability because no menetal element is required (see *Alphacell* v *Woodward* (1972) at p 650).

Reform

The Corporate Manslaughter and Corporate Homicide Act 2007

The above material shows the background to this legislation. The 2007 Act makes provision for a new offence of corporate manslaughter (to be called corporate homicide in Scotland). The Act was introduced in the Commons on 20 July 2006.

Under common law, a company can, as we have seen, only be convicted of corporate manslaughter if there is enough evidence to find a senior individual within the company guilty. This does not reflect the reality of modern corporate life, certainly in larger companies, and to date only small organisations have been convicted, as in *R* v *OLL* (1994) *The Times*,