Omissions liability for homicide offences: reconciling R. v Kennedy with R. v Evans

Dennis J. Baker

Table of Contents

Journal Article

Journal of Criminal Law

J. Crim. L. 2010, 74(4), 310-320

Subject
Criminal law

Keywords
Criminal liability; Duty of care; Manslaughter by gross negligence; Medical treatment; Omissions; Supply of drugs

Cases cited
R. v Evans (Gemma) [2009] EWCA Crim 650; [2009] 1 W.L.R. 1999; [2009] 4 WLUK 52 (CA (Crim Div))
R. v Kennedy (Simon) [2007] UKHL 38; [2008] 1 A.C. 269; [2007] 10 WLUK 421 (HL)
R. v Miller (James) [1983] 2 A.C. 161; [1983] 3 WLUK 172 (HL)

***J. Crim. L. 310** *Keywords* Causation; Manslaughter; Omissions; Gross negligence; Assumed duties

In *R* v *Miller* [1] a squatter started a fire by smoking whilst in bed and as a result caused a fire. Instead of putting the fire out or calling the fire brigade, Miller moved to another room. Miller was convicted of arson on the basis that he had created the danger by his own direct act and because he intentionally or recklessly failed to do anything to counteract the harm that he had set in motion. [2] The defendant's earlier negligent acting set the harm in motion; therefore he had a duty to counteract it. By omitting to act to counteract the harm, Miller recklessly allowed his earlier innocent actions to cause serious harm. Professor Glanville Williams outlines the inculpating nature of this type of wrongdoing in the following passage:

The principle is that where a person accidentally creates a danger he or she can be liable for letting the danger eventuate. More technically, the rule is that where the law forbids a particular result (whether we call the crime a result-crime or not), then *mens rea* conceived after the act and before the result occurs (but at the time when the defendant could still have prevented

the result) can (as the law is now established by *Miller*) lead to liability, provided that the defendant's conduct falls within the terms of the offence. [3]

If Miller had not only destroyed the house, but had also caused the death of an occupant, a manslaughter charge would have been appropriate. It would be grossly negligent to sit idly as a building burns down when you have started the fire and when you have no way of knowing whether there are people inside it. Such a conclusion does not seem too controversial and is supported by the decision of *R* v *Evans*. [4] In *R* v *Evans*, [5] Gemma Evans, a 24-year-old woman, purchased heroin and supplied her 16-year-old sister, Carly. Carly self-injected in a house in which she resided with Evans (the defendant) and her mother. After injecting the drug she developed and complained of symptoms consistent with an ***J. Crim. L. 311*** overdose. Evans appreciated that Carly's condition was very serious and indicative of an overdose and, together with her mother, Andrea Townsend (Carly's mother) who was also convicted of manslaughter, believed that she was responsible for Carly's care. "The appellant described in a later interview with the police that she had seen that Carly's lips had turned blue, that she was "in a mess", and was incapable of responding to attempts to speak to her. The appellant and her mother decided not to seek medical assistance because they feared that they themselves and possibly Carly would get into trouble.' [6] Instead, they put Carly in bed with the hope that she would make a miraculous recovery. The defendant and her mother checked on her occasionally and slept in the same room, but tragically Carly died during the night. The medical evidence demonstrated that the cause of death was heroin poisoning. Evans and her mother were charged with gross negligence manslaughter. Both women were also heroin addicts and they knew the signs of an overdose and were fully aware of the dangers involved. If they had called for help the death might have been avoided, but there is no way to know whether the ambulance would have arrived in time, etc.

Evans appealed against her conviction for gross negligence manslaughter. It was argued by the defence team that the case should have been withdrawn from the jury because the Crown failed to establish that Evans owed the victim a duty of care. The Court of Appeal held that whether or not there was a duty was a question for the judge not the jury and that Evans had a duty because she had created a dangerous situation and failed to do anything to remedy it. [7] But this overlooks the fact that Evans's sister created the dangerous situation by making the independent choice to self-inject. The mother was convicted on the basis of her "familial duty or responsibility which marked her relationship with the deceased' and which required her to take reasonable steps to summon assistance for her young daughter once she realised that she was critically ill and in need of urgent medical attention. [8] Since Evans was an older half-sister, the court decided that she did not come within the purview of the familial duty doctrine. An adult sibling is not regarded as the constructive guardian of younger siblings. In effect, Evans was convicted on the grounds that she had helped her sister to create a dangerous situation for herself by supplying her with deadly drugs; she was aware that her sister's act of self-injection had put her in peril; and because she failed to summon help when she was in a position to do so.

In this comment, I argue two points: first, that it is doubtful that there was a sufficient causal link between Evans's negligent omission and her ***J. Crim. L. 312*** sister's death; secondly, that merely facilitating another to create a dangerous situation for herself does not seem to be sufficient for imposing a duty of care.

Indirect contributions to self-endangerment

R v *Evans* holds that if a person merely facilitates another to create a dangerous situation for himself, that person may be held criminally liable for a homicide offence if that self-endangerment results in death. Evans's sister made an intervening choice to self-inject and it was her independent self-injection that was the direct cause of the dangerous situation. Evans's pre-existing duty of care was grounded on her act of supply and her awareness of the fact that her act of supply had facilitated the creation of a dangerous and life-threatening situation. Evans did not create the dangerous situation, but rather she merely made an indirect causative contribution to the dangerous situation. Furthermore, if she had merely supplied the drugs and had left the scene, and therefore had remained ignorant of the fact that her act of supply had resulted in a dangerous overdose situation, her act of mere supply *per se* would not have been sufficient for a conviction of gross negligence manslaughter. [9] The Court of Appeal held: [10]

The duty necessary to found gross negligence manslaughter is plainly not confined to cases of a familial or professional relationship between the defendant and the deceased. In our judgment, consistently with *R v Adomako* [1995] 1 AC 171 and the link between civil and criminal liability for negligence, for the purposes of gross negligence manslaughter, when a person has *created or contributed* to the creation of a state of affairs which he knows, or ought reasonably to know, has become life threatening, a consequent duty on him to act by taking reasonable steps to save the other's life will normally arise.

The question here is whether the act which creates the dangerous situation needs to have a direct causal connection with the dangerous situation. In other words, does D have a duty to counteract a dangerous situation where her act was only a negligible indirect cause of the dangerous situation? I would think not. Nonetheless, *R* v *Evans* makes it clear that if a person supplies dangerous drugs and becomes aware of the fact that his particular act of supply has put a given victim in peril, he will have a duty to take reasonable steps to counteract that danger. If a breach of that duty causes the self-harmer to die, then the person who has assisted the self-harmer to create danger for himself may be convicted of a homicide offence. In this sense, it is difficult to ***J. Crim. L. 313*** reconcile *R* v *Evans* with *R* v *Miller,* since Miller was the direct cause of the harm for which he was held responsible.

The second question of causation concerns D's act/omission and whether it caused V's injury, etc. In this second sense, it is difficult to reconcile *R* v *Evans* with *R* v *Kennedy (No. 2),* [11] because *Kennedy* held that mere facilitation of self-harm or self-endangerment would not be sufficient to ground an unlawful act manslaughter conviction. In *R* v *Kennedy (No. 2),* [12] the defendant prepared a syringe of heroin and gave it to B. B immediately injected himself. B died within an hour of injecting the drugs into himself. The defendant was charged with manslaughter, even though he merely prepared and supplied the drug. The critical question was whether mere supply was an act causative of B's death, given that B injected himself. The House of Lords held that the ultimate harm could not be imputed to the defendant as B's autonomous fully informed choice broke the chain of causation. Let us first consider this principle with respect to the issue of whether Evans "caused' the dangerous situation in which she was held to have a duty to counteract. It is important to understand the limits of indirect but-for causation. Conceptually, indirect but-for facilitation (supplying a deadly drug) cannot factually cause another to make the independent criminal choice to use that assistance to create a dangerous situation for himself. The House of Lords recognised the limits of indirect causation as outlined by Professor Glanville Williams 18 years earlier: [13]

… that the doctrine of secondary liability was developed precisely because an informed voluntary choice was ordinarily regarded as a *novus actus interveniens* breaking the chain of causation: "Principals cause, accomplices encourage (or otherwise influence) or help. If the instigator were regarded as causing the result he would be a principal, and the conceptual division between principals … and accessories would vanish. Indeed, it was because the instigator was not regarded as causing the crime that the notion of accessories had to be developed. This is the irrefragable argument for recognising the *novus actus* principle as one of the bases of our criminal law. The final act is done by the perpetrator, and his guilt pushes the accessories, conceptually speaking, into the background.'

When a person is given no choice and is used as a mere instrument, then the party using her as an instrument is the direct factual cause of that person's wrongdoing. Bordello madam X might factually cause trafficked woman Y to be raped if X imprisons Y and forces Y to have non-consensual sexual intercourse with X's unsuspecting clients, but in these circumstances X is the principal--there is no secondary party. There is a ***J. Crim. L. 314*** distinction between mere but-for facilitation and overbearing coercion. [14] Likewise, when a woman is abducted and forced to prostitute herself, her unsuspecting customer could be said to have made a causal contribution to her rape, but he does not make a (culpable) contribution to her rape: the innocent agent, prostitute-user, is a mere non-culpable instrument who is used by the madam to rape the trafficked women for money-making purposes. The direct legal cause of the rape is the pimp's culpable decision factually to force a non-consenting woman to have sex. Forcing women into prostitution by taking their passports and locking them up is no different than a person physically holding a woman down so that another can rape her.

Kennedy's act of supplying the drug was a mere indirect but-for cause. He did not put a gun to B's head and demand B to inject himself. Kennedy's indirect assistance might be sufficient to ground derivative liability in the right circumstances (i.e. where it is culpably designed to facilitate some primary criminality of a principal), but B was not a principal committing self-manslaughter--there is no such offence. Nor was he attempting suicide, his death was accidental. The only act he committed was self-injection, which is not a crime. Adults with full capacity are able to make their own decisions when it comes to risking self-harm. When a person makes a voluntary and informed decision to engage in self-harm it seems pointless to punish their addict associates, who on a different occasion would have been the recipient of the supply. It arguable that the act of supplying drugs *per se* does not create a dangerous situation any more than selling a gun does. A duty of care to counteract a dangerous situation should only be imposed where D has directly caused the dangerous situation. If someone had supplied Miller with matches, would he too have been liable for creating a dangerous situation?

As for the causal link between Evans's omission and Carly's death, *R* v *Kennedy (No. 2)* [15] makes it clear that dangerous supply alone is not sufficient to incur liability for unlawful act manslaughter. That case concerned unlawful act manslaughter, but gross negligence manslaughter also requires a causal link. It is not enough to establish that there was a duty of care and

that D breached it. A causal connection must be demonstrated between the breach and the end harm. It must be shown that D's breach caused V's injury. This is not a mere matter of arguing "but for' the negligent breach V would have lived. There must be a link between the act and the injury that is sufficiently strong to justify attributing criminal responsibility. It must be shown not only that Evans's act of supply was a negligent beach of the duty of care which she owed her sister, but was also the cause of her sister's death. The test of causation is whether the omission was a significant cause of the victim's death.

J. Crim. L. 315 Did Evans's act of supply cause Carly's death? If a competent adult injects himself with a lethal overdose of heroin, this would be sufficient to break the chain of causation between the supplier's act of supply and the lethal result that flows from the victim's independent use of that dangerous product. There needs to be a balance. The drug dealer knows that he is assisting others who make the fully informed and independent choice to risk their lives and should be punished and labelled as a criminal at this remote level. [16] Deliberately supplying illegal and dangerous substances knowing that it will assist others to risk their lives is not the same as failing to summon help if D were the direct cause of the dangerous situation. Unlike Miller, Evans was not the direct cause of the dangerous situation. The dangerous situation was only created when her sister made the independent choice to self-inject. If Evans went further than merely supplying the drug and had also injected her sister, she would have been in the same position as Miller: she would have been the direct cause of the dangerous situation and thus would have been caught by the Miller doctrine.

Evans differs from *Miller* in that it imposes a duty of care upon those who *contribute* to the creation of a dangerous situation. And *Evans* differs from *R* v *Adomako* [17] in that Evans was held liable even though her negligent act was not the significant cause of her sister's death. The act of supply was not the significant direct cause of Carly's death. Carly's intervening self-injection was the significant cause of her death, not her sister's omission to summon help. Causation would not be established unless it can be shown that the omission was a significant cause of Carly's death. If there were medical evidence to show that the deceased may still have died even if medical attention had been sought at the time when her symptoms became apparent to Evans, then the omission could not be said to have been a significant cause. [18] However, the facts of the case suggest that Evans's sister was alive for some time, so possibly Evans's failure to seek assistance was more than negligible cause. [19] It would depend on whether it could be shown that summoning help in a timely manner would have made a difference.

In *R* v *Evans* the Court of Appeal extended the *Miller* doctrine by holding mere indirect contributions to dangerous situations is sufficient for holding a person liable for a homicide offence. Mere supply should not be enough to ground a gross negligence manslaughter conviction. If D sells a motorbike, sky-diving tickets, a light aircraft, gun, and most commonly alcohol to another, knowing that the customer is making a fully informed choice to risk his or her life; D does not become his or her customer's guardian. What if X sells a gun to Y believing that Y might be suicidal? If Y uses the gun to commit suicide would it be fair to charge X with gross negligence manslaughter? If X went further and supplied the ***J. Crim. L. 316*** gun and also goaded Y to use it knowing that Y was suicidal, then X would be directly connected to the end harm.

Per contra, when a person supplies an "illegal' and dangerous drug to another, and is present to see that the harm is no longer a mere possibility but an actuality, it is not too much to demand that he or she take the simple step of calling an ambulance. It does not seem unfair to criminalise individuals such as Evans, but it would be disproportionate to label this type of remote contribution as an act of homicide. Fair labelling and proportionality in punishment requires parity between the culpableness and harmfulness of the conduct and labelling and punishment. [20] In this case, Evans's culpability is only at the level of negligence and her harm-doing merely involved an indirect contribution to another's self-harm. The *actus reus* for homicide was in fact caused by the self-injector and therefore the direct harmfulness of Evans's conduct is less.

In some jurisdictions the courts have taken a more expansive view by imputing a duty to seek assistance for those they find in peril even if he or she did not make any causal contribution to the dangerous situation. But proportionate labelling means that such cases have not been treated as homicide offences. In *R* v *Finlay,* [21] a Canadian case, a man returned to his room in an intoxicated state and found his roommate suffering from severe injuries. The roommate had extensive bleeding. The defendant ignored the condition of his roommate and went to bed. The next morning he continued to ignore the condition of his roommate and went out for breakfast. The defendant was convicted of "criminal negligence causing bodily harm' and sentenced to nine months under house arrest followed by a two-year probation period with conditions. This approach is reconcilable with the requirements of proportionate punishment and fair labelling because the omission was not labelled as a form of homicide and the defendant was punished proportionately given that he did not inflict the injuries on his roommate, but merely failed to summon help after discovering his roommate's condition. Notably, Finlay did not play a direct part in causing the injury for which he was punished.

Evans's deserved punishment, but it is disproportionate to use a homicide offence for this purpose. After all, hardened drug dealers are criminalised at a much lower level because they do not hang around to see their customers come to grief. It seems fair to criminalise the likes of Evans, because all she had to do was summon an ambulance in a timely manner. If you facilitate self-endangerment and become aware of the danger you have helped to create and are in a position to take reasonable steps to counteract it, then you should do so. If the medical team were not able to save her sister, Evans would have been exempt from any criminal liability, because she would have been able to demonstrate that **J. Crim. L. 317* she took reasonable steps to seek medical help as soon as she became aware of the dangerous situation she had helped to bring about. American courts have imposed liability in situations similar to *R* v *Evans*. [22] However, the label manslaughter is a totally inappropriate label for this type of indirect contribution to self-endangerment. The drug dealer is not criminalised for facilitating self-endangerment, so liability for manslaughter in such cases seems to hinge on the failure to summon help when it is reasonable do so.

The supplier should only be held criminally liable for gross negligence manslaughter if he directly creates the dangerous situation as was the case in *R* v *Miller*. It is too much to label a failure to summon help as a homicide offence when it is the victim that has made the foolish choice to risk his or her life. The Canadian approach of punishing those who have made a contribution to the dangerous situation and have failed to summon help when it was reasonable to do so seems preferable. *R* v *Evans* means that most drug dealers would escape liability simply because they would not be present when the victim makes the intervening choice to use the drugs to create danger for himself or herself.

Personal knowledge and omissions liability

Is there a general duty to summon help based on a personal, physical and temporal relation between defendant and the victim and the harm? Would Evans have been under any duty to seek help for her sister if she had not supplied her sister with the dangerous drugs? It would depend on whether Evans had voluntarily assumed a duty of care under the *R* v *Stone and Dobinson* [23] doctrine. In *R* v *Stone and Dobinson*, an intellectually disabled couple took in an eccentric 61-year-old relative who was suffering from anorexia nervosa. The relative became bedridden due to her ailing health and developed bed sores, and other serious infections, and was clearly in need of medical attention. Stone and his mistress, Dobinson, failed to summon help and eventually the relative died. The defendants were convicted of negligent manslaughter on the basis that they voluntarily assumed a duty of care for the victim by taking her into their home and by providing for her in a minimal sense. Stone and Dobinson did not create any danger for the relative, rather the danger was a natural consequence of the relative's refusal to eat properly for years, which left her bedridden and in need care from trained nursing staff. Dobinson's duty arose merely because she had washed the victim a few times and lived in the same house.

Arguably, the *Stone and Dobinson* doctrine should not extend to cases such as *R* v *Evans,* because Evans's ineffectual acts of care were over hours not years. Despite the immense breadth of the *Stone and Dobinson* doctrine, it might be tolerated if it is interpreted very narrowly as **J. Crim. L. 318* applying in cases where substantial care has been provided for a considerable period of time and where the defendant ought to have known that the victim was deteriorating and required urgent medical assistance. If Evans had not supplied her sister with the dangerous drugs, but rather came home to find her sister self-injecting drugs that she had acquired by herself, then merely checking on her unconscious sister a couple of times in the hours before her death seems insufficient for assuming a duty of care for the purposes of grounding a conviction for gross negligence manslaughter. After all, Evans's sister was perfectly healthy when she decided to self-inject. Evans was not the victim's guardian [24] and it would be a very wide doctrine of liability for homicide if the duty merely arose from blood ties between emancipated adults or from "a desultory attempt to be of assistance'. [25]

In *R* v *Sinclair, Johnson and Smith,* Johnson's conviction was quashed because his acts of assistance were not sufficient to constitute a voluntary assumption of a legal duty. Sinclair was found to owe a duty because there was evidence that he was a good friend of the adult victim, knew the victim was not an addict, and stayed with him throughout the period of his unconsciousness and waited four hours before calling an ambulance. Coupled with this, Sinclair supplied the victim with the lethal methadone. Following *Evans/Miller, R* v *Sinclair, Johnson and Smith* could be put on a firmer footing by arguing Sinclair facilitated the creation of a dangerous situation and therefore had a duty to take reasonable steps to counteract that danger. But a new offence should be created so that these types of foolish offenders can be labelled appropriately. In *R* v *Finlay* [26] the omitter's only relationship with the deceased was that of housemate, but this type of relational connection adds some dimension to the omission to summon help and seems sufficient to impute a duty of care. But not one sufficient for grounding a manslaughter conviction. As I noted above, such cases are best labelled as non-homicide offences.

If Sinclair had not supplied the drug, his merely being a good friend of the victim would not be sufficient to ground a duty of care for purposes of establishing gross negligence manslaughter. Furthermore, it would be stretching it to argue that his presence and desultory attempts of assistance would be sufficient to ground a duty of care. Creating (or facilitating the creation) of a dangerous situation and sitting around for hours hoping for the best, and failing to summon assistance, clearly provides a much more convincing case for imposing criminal liability but that liability should not be for a homicide offence such as gross negligence manslaughter. Similarly, if the victim in *R* v *Evans* had been 18 years old and had been living in her own flat, and if her mother had just happened to visit her at the point in time when she overdosed, the mother's familial relationship would be insufficient to establish a duty of care ***J. Crim. L. 319*** under the current law, because her daughter is emancipated and has herself created the dangerous situation. [27] A mother would have no duty to summon help for a fully independent adult daughter. Enacting a new offence criminalising failures to summon help when there is some type of relational link, would however catch this type of reprehensible omission. Such a response would allow fair labelling and proportionality to be considered.

Conclusion

R v *Kennedy (No. 2)* holds that the victim's reckless intervening self-injection breaks the chain of causation between the act of supply and the end harm that results from the act of supply. *R* v *Evans* does not disturb this principle, but holds that even when V self-injects, the supplier of the drugs will be liable if she does not summon help. *R* v *Evans* holds that those who fail to summon help when they can see that it is needed are causally linked to the end harm and thus may be criminalised. I noted above that this might be disputed if there is evidence that demonstrates that help would not have changed the end result (i.e. the victim would have died anyway).

Defendants such Stone, Dobinson, Evans, Findlay and Hood are stupid rather than dangerous and using "homicide' offences such as gross negligence manslaughter to criminalise them serves no retributive goal. If criminalisation is appropriate in cases such as *R* v *Evans, R* v *Stone and Dobinson* and *R* v *Hood,* [28] then proportionate punishment and fair labelling would require it not to be punished and labelled as a form of homicide. In *R* v *Hood* [29] the husband of the victim was jailed for 30 months, even though his wife was reluctant to go to hospital, his negligence was not the sole cause of his wife's death and he eventually summoned help. It would be fairer to convict this type of defendant of some lesser negligence offence. Likewise, Evans did not directly create a situation of danger for her sister. Her contribution to the danger was indirect and remote. Her sister directly endangered her own life by making the independent choice to inject the heroin into her own arm. Direct endangerment only materialised when her sister self-injected the heroin. Evans's indirect contribution was a but-for causative contribution and would be better labelled as something less serious than gross negligence manslaughter. A special offence of neglecting a duty to summon help when one personally knows (regardless of blood ties, i.e. housemates, friends, neighbours, and so on) the victim might provide an ***J. Crim. L. 320*** alternative. It might have been reasonable to hold that Evans owed a duty of care to her dying sister, but it was unreasonable to hold that a breach of that duty constituted homicide. As far as having a duty to counteract dangerous situations is concerned, in homicide cases it should only arise if D directly caused the dangerous situation to transpire. Miller was the direct cause of the danger that was caused by the fire in *R* v *Miller*. Miller directly created the danger and if lives had been lost, the appropriate label would have been gross negligence manslaughter. [30]

School of Law, King's College London; e-mail: dennis.baker@kcl.ac.uk.

Footnotes

1 [1983] 2 WLR 539. In *R* v *Evans* [2009] EWCA Crim 650, [2009] 1 WLR 1999, the *Miller* doctrine was invoked to ground a conviction for gross negligence manslaughter.

2 This approach was first expounded in the USA in *Commonwealth* v *Cali,* 247 Mass 20 (1923).

3 Glanville Williams, *Textbook of Criminal Law* (Steven & Sons: London, 1983) 155-6.

4 [2009] EWCA Crim 650, [2009] 1 WLR 1999. See also *R* v *Willoughby* [2004] EWCA Crim 365, [2005] 1 WLR 1880.

5 [2009] EWCA Crim 650, [2009] 1 WLR 1999.
6 *R* v *Evans* [2009] EWCA Crim 650, [2009] 1 WLR 1999 at [6].
7 This doctrine is not new. See variants in *Green* v *Cross* (1910) 103 LT 279; *Commonwealth* v *Cali,* 247 Mass 20 (1923).
8 The mother did not appeal and there is no discussion of basis of her conviction in the *Evans* appeal, beyond a passing reference of her duty based on her familial relationship with the deceased, who was a minor. See *R* v *Evans* [2009] EWCA Crim 650, [2009] 1 WLR 1999 at [20].
9 *R* v *Evans* [2009] EWCA Crim 650, [2009] 1 WLR 1999 at [12].
10 *R* v *Evans* [2009] EWCA Crim 650, [2009] 1 WLR 1999 at [31] (emphasis supplied). In *Evans,* the court cited a number of cases involved gross negligence manslaughter including *R* v *Willoughby* [2005] 1 Cr App R 29; *R* v *Wacker* [2003] 1 Cr App R 22; *R* v *Sinclair, Johnson and Smith* [1998] EWCA Crim 2590, and concluded (at [31]): "These authorities are consistent with our analysis. None involved what could sensibly be described as manslaughter by *mere omission* and in each it was an essential requirement of any potential basis for conviction that the defendant should have *failed to act* when he was under a *duty to do so.* ' Emphasis supplied.
11 [2007] UKHL 38, [2008] 1 AC 269.
12 Ibid.
13 *R* v *Kennedy (No. 2)* [2007] UKHL 38, [2008] 1 AC 269 at [17], citing Professor Glanville Williams, "Finis for Novus Actus?' (1989) 48 Camb LJ 391 at 398. The Law Lords also cited the following passage from p. 392 of Williams's article: "I may suggest reasons to you for doing something; I may urge you to do it, tell you it will pay you to do it, tell you it is your duty to do it. My efforts may perhaps make it very much more likely that you will do it. But they do not cause you to do it, in the sense in which one causes a kettle of water to boil by putting it on the stove. Your volitional act is regarded (within the doctrine of responsibility) as setting a new "chain of causation" going, irrespective of what has happened before.'
14 For a good judicial discussion of moral involuntariness, see *R* v *Ruzic* [2001] SCC 24 (Can), *per* LeBel J.
15 [2007] UKHL 38, [2008] 1 AC 269.
16 It is arguable given the dangerousness of heroin and similar drugs, supply should be labelled and punished as a serious offence *per se.*
17 [1995] 1 AC 171.
18 *R* v *Pace* (2008) 187 A Crim R 205; cf. *R* v *Dalloway* (1847) 2 Cox CC 273.
19 *R* v *Cheshire* [1991] 1 WLR 844 at 851-2.
20 D. J. Baker, "Constitutionalizing the Harm Principle' (2008) 27 Crim Just Ethics 3 at 7-9; D. J. Baker and L. X. Zhao, "Responsibility Links, Fair Labeling and Proportionality in China: Comparing China's Criminal Law Theory and Doctrine' (2009) 14 UCLA J Int'l L For Aff 1.
21 [1996] 17 OTC 237.
22 See *State* v *Wassil,* 658 A2d 548 (1995) (US). In that case, the defendant created a dangerous situation by supplying drugs to the victim and omitted to seek assistance in a timely manner. He did eventually summon an ambulance, but the victim while still alive, was too far gone to save.
23 [1977] QB.354. See also *R* v *Hood* [2004] 1 Cr App R 73; *R* v *Nichols* (1874) 13 Cox CC 75. Cf. *R* v *Instan* [1893] 1 QB 450.
24 It was recognised long ago that a person does not have a legal duty to rescue or summon help for his or her sibling, see *R* v *Smith* (1826) 172 ER 203.
25 *R* v *Evans* [2009] 1 WLR 1999 at [28], citing *R* v *Sinclair, Johnson and Smith* (1998) 148 NLJ 1353.
26 [1996] 17 OTC 237.
27 There is no duty to an emancipated child: *R* v *Shephard* (1862) 9 Cox CC 123; *R* v *Kennedy (No. 2)* [2007] UKHL 38, [2008] 1 AC 269. This is also the approach that has been adopted in some jurisdictions in the USA, see *People* v *Beardsley,* 150 Mich 206 (1907). However, many states do impose duties on those who are married to take reasonable steps to rescue their dependent adult spouses. This would be limited to who are actually cohabiting together. However, in many of these marital cases, the facts have been such that the duty could just as easily be explain as creation of danger cases. For an overview of the US position, see J. M. Collins, E. J. Leib and D. Markel, "Punishing Family Status' (2008) 88 BU L Rev 1327.
28 [2003] EWCA Crim 2772, [2004] 1 Cr App R (S) 73.
29 Ibid.
30 Cf. *R* v *Johnson* [2008] EWCA Crim 2976, [2009] 2 Cr App R (S) 28, where a builder received a two-year sentence for negligently blocking a chimney thereby causing the occupant to die from carbon monoxide poisoning.

