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*,

9 December, where the company and its managing director were found guilty of manslaughter following the deaths of four teenagers in the Lyme Bay canoe disaster. Significantly, the managing director was also the sole shareholder in the one-man company and it was easy to impute his conduct also to that of the company. He was imprisoned for one year and the company was fined.

The new criminal offence addresses this situation by allowing the courts to consider the overall picture of how an organisation's activities were managed by its senior managers, rather than focusing on the actions of one individual. Section 2 defines a senior manager as an individual who plays a significant role in the making of decisions about how the whole or a substantial part of those activities are to be managed or organised or actually managed. Failings at junior management level will not lead to the prosecution of the company.

An organisation will be guilty of the new offence where the gross failure of senior management has led to the death of an employee or a member of the public. It will include failure to ensure safe working practices for employees and failure to maintain the safety of premises. It will cover the provision of goods and services to members of the public and the construction, use and maintenance of the infrastructure or vehicles when operating commercially. Crown organisations are included.

Companies found guilty of corporate manslaughter will be subject to an unlimited fine. The court will also be able to impose a remedial order to take specified steps to remedy the breach within a specified period.

The Act does not include a directors' offence carrying with it the possibility of imprisonment, as has been proposed in the past.

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SPECIFIC OFFENCES

The intention here is to include only specific offences against the person. These are set out below.

Homicide

Homicide is the unlawful killing of a human being. There are three main homicides, i.e. murder, voluntary manslaughter and involuntary manslaughter, which includes causing death by dangerous driving.

Murder

This is basically a common-law offence and to constitute it there must be an unlawful killing of another human being under the Queen's peace with malice aforethought. Formerly, the victim had to die within a year and a day of the defendant's criminal conduct.

The year and a day rule prevented the prosecution of defendants for murder as medical science developed techniques for keeping seriously injured persons alive for long periods.

The Law Reform (Year and a Day Rule) Act 1996 abolished the year and a day rule, i.e. the irrebuttable presumption that applied for the purposes of offences causing death where more than a year and a day had elapsed. The Act abolishes the rule in regard to murder, manslaughter, abetting suicides, infanticides, causing death by dangerous driving when under the influence of drink, and aggravated vehicle taking causing death (s 1). It does not affect the application of the rule to acts or omissions occurring before the relevant part of the Act came into force, i.e. 17 June 1996 (s 3).

Section 2 restricts the bringing of proceedings in that the consent of the Attorney-General is required before a prosecution can be brought in cases where the injury alleged to have caused the death did in fact occur more than three years before the death and also where the person to be prosecuted for a fatal offence has already been convicted of an offence, e.g. grievous bodily harm, connected to the circumstances of the death.

The *actus reus*

Since the killing must be of a human being, the unlawful killing of an unborn child is not murder. However, such killings are covered and made criminal in appropriate circumstances by s 58 of the Offences Against the Person Act 1861, s 1 of the Infant Life (Preservation) Act 1929 and the Abortion Act 1967. The detail of these offences is not considered here. The expression 'another human being' includes a child that has been born alive and has an existence independent of the mother. Where a person injures a child while it is in its mother's womb and it dies later from those injuries *after being born*, it may be appropriate to bring a charge of murder. The fact that the victim must be 'under the Queen's peace' prevents the killing of the enemy in wartime from being murder. This refers to killing in action. It is murder to kill prisoners of war. Under the Offences Against the Person Act 1861 any British citizen who commits murder anywhere in the world may be tried in England or Wales. In addition, a killing in self-defence may be lawful and so not murder (see further Chapter 25).

> ***R* v *Dyson***, 1908 – Death within a year and a day; Attorney-General's consent now required (**533**)

The *mens rea*

Some consideration has already been given to this. However, the *mens rea* for murder is defined as 'malice aforethought'. According to the House of Lords in *Maloney* (1985), murder is a crime which requires a specific intent, either direct as where the defendant *desired* the consequences, or oblique as where he foresaw the consequences as *near certain*. Recklessness is not enough. The court must be satisfied of the presence of such an intent either to kill or cause grievous bodily harm.

In this connection, it should be noted that the decision in *Maloney* (1985) confirms that it is enough malice if the intention is not to kill but to cause grievous bodily harm.

Maloney thus decides that intent to kill and intention to cause grievous bodily harm are the only forms of *mens rea* for murder.

In so far as the expression 'malice aforethought' suggests evidence of premeditation or plot, it is misleading since this is not necessary, provided the specific intent to kill is present.

Manslaughter

Manslaughter is divided into voluntary manslaughter and involuntary manslaughter.

Voluntary manslaughter

This is murder reduced to manslaughter by the presence under the Homicide Act 1957 of provocation, diminished responsibility or suicide pact. Once it is shown that one of these partial defences exists, the crime ceases to be murder and the fixed penalty of life imprisonment goes, giving the judge a discretion as to sentence.

The *mens rea* is, therefore, the *mens rea* for murder, but with the mitigating factors of provocation, diminished responsibility or suicide pact.

Provocation generally

Section 3 of the Homicide Act 1957 applies. It provides as follows.

> Where on a charge of murder there is evidence on which the jury can find that the person charged was provoked (whether by things done or by things said or by both together) to lose his self control, the question whether the provocation was enough to make a reasonable man do as he did shall be left to be determined by the jury; and in determining that question the jury shall take into account everything both done and said according to the effect which, in their opinion, it would have on a reasonable man.

The questions to consider

There are two questions to consider, as follows:

- Was the defendant actually provoked? This is a matter for the jury, as the Homicide Act 1957 states. If the jury decides that the defendant was not provoked, the second question does not arise and the defence of provocation will fail.
- If the jury does decide that the defendant was provoked, then that provocation must be such that it would have caused a reasonable person to be provoked. The problem here has been whether any particular characteristics of the defendant are to be taken into account so that, although a reasonable person would not have been provoked, the defence must be allowed because of the particular characteristics of the defendant. Bad temper is clearly not a characteristic that counts because it is a character defect not an excuse.

The problems have arisen in regard to what characteristics apart from the above should be taken into account and what should not or whether they should be taken into account at all being regarded as defects which would not be possessed by the reasonable man which the 1957 Act uses as the yardstick.

The relevant case law is given in the Comment to *R* v *Camplin* (1978), see Case **534** on p 904.

Was there provocation?

Although the issue of provocation is normally raised by the defence, the burden of proving that there was *no* provocation is on the prosecution once it is raised. Where, therefore, the jury has a reasonable doubt about the matter, it must be taken that the defendant was provoked. The judge can put the matter to the jury if it is not raised by the defence. In fact it was decided by the Court of Appeal in *R* v *Cambridge* (1994) *The Times*, 15 February that in a murder trial a judge is *obliged* to leave the matter of provocation to the jury if he decides that there is evidence of it, even if provocation has not been put forward by the defence and is contrary to it. The test here is subjective, i.e. was the particular defendant provoked? If the jury finds that he was not, then it is not relevant that a reasonable man would have been.

In *Franco* v *The Queen* (2001) *The Times*, 11 October the Privy Council added a further point which is that a court cannot *infer* what a jury might have decided in terms of provocation. In *Franco* the conviction of the defendant for murder was quashed and a conviction of manslaughter substituted on the ground that there was evidence of provocation that was not put to the jury. It should have been even though the defendant had relied on self-defence.

However, it is the role of the judge to determine whether there is enough evidence for a jury to find that there was a reasonable possibility of specific provoking words or conduct which caused the defendant to lose self-control. If so, the judge must leave the question of provocation to the jury, no matter whether the source of the evidence came from the defence

or the prosecution. If in the view of the trial judge, taken on reasonable grounds that there was no such evidence, he had no need to put the defence to the jury, an appeal on the grounds that he should will normally fail (see *R* v *Acott (Brian Gordon)* [1997] 1 WLR 306 where the defendant had killed his mother in a violent attack and the prosecution had referred in cross-examination to the fact that he had lost his self-control).

It was decided by the Court of Appeal in *R* v *Stewart* [1995] 4 All ER 999 that if the defence of provocation is not raised but the judge nevertheless decides to refer it to the jury, he should give the jury some assistance as to what evidence they have to consider in relation to provocation, i.e. did the defendant lose his self-control as a result of things done or said, and whether a reasonable man would have been provoked by such things.

How would a reasonable person react?

The next stage in the test is objective. If the jury decides that the defendant was provoked, then it must go on to decide how a *reasonable person* would have responded to that provocation and whether any particular characteristics of the defendant should be brought into account, if at all, having received the judge's summing up. The reasonable person test means in effect that the defendant's reaction will normally have to bear some proportion to the provocation.

R v *Camplin*, 1978 – Taunting a 15-year-old (**534**)

Other matters

A relevant provocation can be induced by the defendant himself. This covers the case where the defendant started the trouble and caused his victim to provoke him. In addition, there must be a 'sudden and temporary loss of self-control', which means that there must not be a significant 'cooling-off' period between the provocation and the killing.

R v *Johnson*, 1989 – Where provocation is self-induced (**535**)
R v *Thornton*, 1991 – A slow wearing down of control (**536**)

As regards domestic homicides, the government has considered proposals for change in regard to the defence of provocation which is raised by women who have killed their male partners but claim to have been provoked. The defence by no means always succeeds. It is often raised by men who kill their partners and the stance taken by government ministers is that in these cases the crime is too often reduced to manslaughter. Crown prosecutors would be issued with guidance that domestic homicides should carry a charge of murder not manslaughter together with a new category of self-defence for women who kill their partners after years of abuse. There is currently no legislation on these proposals.

Diminished responsibility

By reason of s 2(1) of the Homicide Act 1957 this defence is available in respect of a murder charge only. The *burden of proof is on the defence* which must show that the defendant 'was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing'.

The question whether the requirement that the defence must prove diminished responsibility in terms of Art 6 of the Human Rights Convention (right to a fair hearing) was raised in *R* v *Lambert* [2001] 1 All ER 1014. The Court of Appeal ruled that this burden of proof was not contrary to Art 6. The presumption of innocence still applied. This was a special defence and did not interfere with the general rule that the burden of proof is on the prosecution.

The defence is wider than that of insanity (see Chapter 25) and covers other mental conditions. In fact the defendant may *know* what he is doing and that it is *wrong*. His alleged problem is that he finds it *substantially more difficult to control* his actions than would a normal person, and this difficulty is caused by some *abnormality of his mind*.

It is not correct for a judge to direct the jury that only partial or borderline insanity amounts to diminished responsibility (*R* v *Seers* [1984] 79 Cr App R 261).

A killing arising from drink or drugs is not covered because these conditions do not come within 'disease or injury'. However, where the taking of excessive drink or drugs over a period have, in effect, caused mental disease then the defence has been applied.

R v *Tandy*, 1987 – Use of alcohol not involuntary (**537**)
R v *Gittins*, 1984 – Where the taking of drink and drugs is a disease (**538**)

It was held in *R* v *Hobson (Kathleen)* (1997) *The Times*, 25 June that since battered woman's syndrome was added to the British classification of mental diseases in 1994, it could now be raised as forming the basis of the defence of diminished responsibility.

A person who is unfit to plead cannot raise the diminished responsibility defence because he is not liable to be convicted of murder (see *R* v *Antoine* [2000] 2 WLR 703, which is considered more fully in Chapter 25).

Suicide pact

The Homicide Act 1957 states in s 4(1) that:

> It shall be manslaughter and not murder, for a person acting in pursuance of a suicide pact between him and another to kill the other or be a party to the other being killed by a third person.

The defendant must show:

- that a suicide pact was made; and
- that he or she intended to die at the time the killing took place.

A suicide pact is defined by the Homicide Act 1957 in s 4(3) as:

> A common agreement between two or more persons having for its object the death of all of them, whether or not each is to take his own life, but nothing being done by a person who enters into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has a settled intention of dying in pursuance of the pact.

It is relevant to mention here the offence of aiding suicide. In this connection, s 2 of the Suicide Act 1961 states that a person who aids, abets, counsels or procures the suicide of another or an attempt by another to commit suicide shall be liable to a maximum of 14 years' imprisonment. The crime is triable on indictment and is an arrestable offence. It is an alternative verdict on a charge of murder or manslaughter. It was formerly an offence for a person to commit suicide but this was repealed by s 1 of the above Act. The House of Lords has ruled that the 1961 Act is not incompatible with the Convention on Human Rights.

In the same case their Lordships upheld the decision of the Director of Public Prosecutions to prosecute in a case where a woman suffering from motor neurone disease wanted her husband to help her die. The DPP had no power to give an undertaking that he would not prosecute in advance of the offence being committed. Even if the power existed using it for that purpose would be an abuse of due process because the circumstances of the offence would not be known before it took place (see *R (on the application of Pretty)* v *DPP* (2001) *The Times*, 23 October). Mrs Pretty was also unsuccessful in her attempt to have the Lords' ruling overturned by the European Court of Human Rights.

Involuntary manslaughter

It is apparent from the case law that involuntary manslaughter is based upon either an unlawful act resulting in death, sometimes called constructive manslaughter, or death resulting from gross (or criminal) negligence.

Manslaughter from an unlawful act (constructive manslaughter)

Constructive manslaughter has three ingredients as follows:

- ***An unlawful act committed by the defendant that results in the death of another person***: as in the law of tort, the chain of causation can be broken and, in particular, this has resulted in drug dealers being regarded as not liable for the deaths of those supplied, as in *R* v *Dalby* [1982] 1 All ER 916. However, there may be liability where there is, in fact, little if any break in the chain of causation. Thus, in *R* v *Kennedy* [1999] Crim LR 739 the victim asked the defendant to get him something that would make him sleep. The defendant prepared a syringe filled with heroin and handed it to the victim. The victim paid the defendant and injected himself and left. He died less than an hour later and the defendant was convicted of manslaughter.

  The ruling in *Kennedy* was doubted but not overruled by the Court of Appeal in *R* v *Rogers (Stephen)* (2003) *The Times*, 20 March. Rogers held a tourniquet around the arm of a drug abuser so that the abuser could inject himself. This was regarded by the Court of Appeal as sufficient involvement in the activity of injection as to make Rogers guilty of manslaughter when the abuser died following cardiac arrest. The Court of Appeal doubted whether there was sufficient participation by the defendant in the mechanics of the injection to have found Kennedy guilty of manslaughter. There is no question of aiding and abetting in such a situation because self-injection is not a crime other than being in possession of the relevant drug. Much turns therefore on the circumstances of the case. Those involved in, say, handing drugs to the abuser in this sort of case are not parties to his or her obtaining them. Rogers was not a party but the dealer in *Kennedy* was and the death quickly followed. It could be said therefore that the issue of whether the dealer caused the death of the user by the unlawful act of supplying the drug should have been left to the jury but it was not. There are cases stating that drug dealers cannot, in general, be held liable for the *ultimate* as distinct from *proximate* death of their user victims (see *R* v *Dalby* [1982] 1 All ER 916).

  Nevertheless, when Kennedy appealed to the Court of Appeal, that court affirmed his conviction, saying that there was no error in the trial judge's judgment. Those involved were acting in concert in administering the heroin (see *R* v *Kennedy* [2005] 1 WLR 2159).

- ***The act must have involved a risk that someone would be harmed***: the risk is judged objectively i.e. would a reasonable and sober person observing the act see an apparent risk. The harm must be physical. The risk of psychological or emotional harm is not enough.
- ***The defendant must have had the* mens rea *for the unlawful act, such as an assault, that led to the victim's death***: thus, in *R* v *Lamb* [1967] 2 QB 981 the defendant pointed a gun at his friend believing, as was the case, that the two rounds in the gun were not in the firing chamber. The defendant pulled the trigger, but with no intention of harming his friend. However, the barrel rotated so that a bullet moved into the firing chamber and the friend was shot and killed. The defendant did not know how the gun worked and saw the incident as a joke. *He lacked the* mens rea *for assault and, therefore, was not guilty of manslaughter.*

R v *Church*, 1966 – The unlawful act must create the risk of physical harm (**539**)
R v *Lowe*, 1973 – Unlawful omission not generally enough (**527**)

Manslaughter by gross negligence

To cause death by *any* lack of due care will not amount to manslaughter. A very high degree of negligence is necessary for the establishment of a crime. Whether the appropriate degree of negligence exists is a matter for the jury, following direction by the judge. The test according to the House of Lords in *R* v *Adomako* [1994] 3 All ER 79 is that a defendant is properly convicted of involuntary manslaughter by breach of duty if the jury is directed and finds that the defendant was in breach of a duty of care towards the victim who died, that the breach of duty caused the death of the victim and that the breach of duty was such as to be characterised as gross negligence and, therefore, a crime. Lord Mackay LC said, giving an analysis of the law:

> . . . in my opinion the ordinary principles of the law of negligence apply to ascertain whether or not the defendant has been in breach of a duty of care towards the victim who has died. If such breach of duty is established the next question is whether that breach of duty should be characterised as gross negligence and therefore as a crime. This will depend on the seriousness of the breach of duty committed by the defendant in all the circumstances in which the defendant was placed when it occurred. The jury will have to consider whether the extent to which the defendant's conduct departed from the proper standard of care incumbent upon him, involving as it must have done a risk of death to the patient, was such that it should be judged criminal.

The circumstances to which a charge of involuntary manslaughter may apply are so various that it is unwise to attempt to categorise or detail specimen directions, but certainly civil liability, although sufficient to establish the duty of care, is not sufficient to amount to 'gross negligence', nor is *Caldwell* recklessness. The test as stated in *Adomako* is enough. In the case the defendant was an anaesthetist during an eye operation on a patient. A tube supplying oxygen to the patient became disconnected but the defendant failed to notice this for some six minutes. The patient suffered cardiac arrest and died. The defendant was convicted of manslaughter and his appeal to the House of Lords was dismissed. There would, of course, have been an action in negligence as a fatal accident (see Chapter 20) but it is interesting to note that, because the negligence here is gross, criminal liability can also result.

Manslaughter by gross negligence and human rights

The definition of manslaughter by gross negligence continues to produce cases mainly in the field of medical treatment and care. Counsel for the defence in this sort of case have

challenged the House of Lords' definition in *Adomako* as being circular and uncertain. The *Adomako* ruling is, as we have seen, to the effect that the jury are to be directed that in order to find gross negligence they must find that there has been a departure from the expected standard of professional practice so serious as to amount to a criminal act. Some lawyers say this direction is circular, in that, in order to find the defendant guilty of a crime, you must find that he or she is guilty of a crime.

This direction to the jury was challenged in *R* v *Misra* [2005] Crim App Rep 328 on the grounds that it contravened the Convention on Human Rights, Art 6 (right to a fair trial) and Art 7 (creation of criminal offences after the event). In other words, it is impossible to obey an uncertain law.

The defendants in the case were doctors. The patient had toxic shock syndrome. The defendants failed to appreciate how ill the patient was, so that he did not get the proper treatment and died. The jury convicted both doctors of gross negligence manslaughter on the basis of the *Adomako* direction. The doctors appealed to the Court of Appeal which dismissed the appeal, ruling that:

- The requirement for legal certainty of an offence was not *absolute* certainty but *sufficient* certainty. This common law principle had not been changed by the Convention.
- The offence of manslaughter by gross negligence was based on well-established principles, i.e. death resulting from a negligent breach of a duty of care owed by the defendant to the deceased; that in the negligent breach of that duty the victim was exposed to the risk of death; and that the circumstances were so reprehensible as to amount to gross negligence (*Adomako* applied).
- Gross negligence manslaughter should not be replaced by or confined to cases of reckless negligence.
- On the issue that a criminal offence normally requires *mens rea*, the court said that the requirement for gross negligence provided the necessary element of culpability.

Gross negligence manslaughter was not incompatible with the Convention.

Causing death by dangerous or careless driving

Under s 1 of the Road Traffic Act 1988 as substituted by s 1 of the Road Traffic Act 1991 the offence of causing death by dangerous driving replaces the offence of causing death by reckless driving in earlier legislation. It was thought that while the general remarks about criminal recklessness in case law had relevance in regard to manslaughter generally, they were not entirely suitable in the road traffic situation. In particular, it was felt to be *too subjective* so that there was a need to move to an *objective assessment of the standard of driving of the defendant*. The offence of causing death by dangerous driving has two elements as follows:

(*a*) there must be a standard of driving which falls far below that to be expected of a competent and careful driver; and
(*b*) the driving must carry a potential or actual danger of physical injury or serious damage to property.

The standard of driving will be judged objectively taking no account, e.g., of inexperience, age or disability – though these will be reflected in the sentence. The requirements of the section would be met where the state of the vehicle was such that a competent and careful driver would not drive it at all. If a driver was in an unfit condition to drive, e.g. by reason of drink or drugs, this would not be a defence if he drove dangerously as defined above.

In addition to the cases of dangerous *driving*, it should be noted that successful prosecutions have been brought on the basis of the *state of the vehicle and the state of the driver*. Thus in *R* v *Skelton* [1995] Crim LR 635 the defendant was a lorry driver who drove his lorry on a motorway after receiving a warning from another driver that the air pressure gauges were low. While on the motorway the pressure problem activated the handbrake which is an effect of such a problem and another lorry driver was killed when he ran into the back of the defendant's lorry. Although the crash was not immediate but some 10 minutes after the defendant's lorry stopped blocking the lane the Court of Appeal ruled that the chain of causation had not been broken and the defendant was rightly convicted. In *R* v *Marison* [1996] Crim LR 909 a diabetic was successfully charged with causing death by dangerous driving. He had suffered periods of unconsciousness in the previous six months. As regards this prosecution, he went into an unconscious state and veered on to the wrong side of the road hitting an oncoming vehicle and killing its driver. He was convicted of causing death by dangerous driving.

Section 3A of the Road Traffic Act 1988 contains an offence of causing death by careless driving *under the influence of drink or drugs*. It creates an objective test of negligence that requires merely that the defendant's driving has fallen below the reasonable standard of care and that drink or drugs were involved.

Violent offences which are not fatal

Under this heading we must consider the following crimes.

Assault and battery

It has already been pointed out in Chapter 21 on the law of specific torts that assault is a threat to apply force immediately to the person of the victim and a battery is the actual application of that force. This distinction also exists in the criminal law. Assault and battery are summary offences under s 39 of the Criminal Justice Act 1988.

Assault

The *actus reus* of assault consists of an act which gives the victim reasonable cause to believe that there will be an immediate infliction of violence. Assault requires basic intent and so actual intention or *Cunningham* recklessness is enough.

Battery

The *actus reus* consists in the actual application of force however slight to another without that other's consent. As we have seen, a battery can consist of an omission (see *Fagan* v *Metropolitan Police Commissioner* (1968) in Chapter 21).

The *mens rea* is a basic intent and so once again actual intention or *Cunningham* recklessness will suffice.

Defences

The following defences are available.