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Criminal Law, Simester and Sullivan (updated 14.10.02)

The basis of liability for corporate manslaughter Pages 248-250; 367-8
A-G's Reference (No 2 of 1999) [2000] 3 All ER 182; [2000] 3 WLR 195; [2000] 2 Cr App R 207

Following the Southall rail crash, a prosecution for corporate manslaughter and offences under the Health and Safety at Work Act 1974 was brought against South Western Trains plc. At trial, the train company was straightforwardly convicted for an offence under the 1974 Act. The issue for that offence was simply one of determining whether, in the light of the facts revealed in investigating the tragedy, the company had done all that was reasonably practicable to ensure the safety of passengers. The safety deficiencies revealed by the investigation disclosed that it had not. By contrast, the company was acquitted of corporate manslaughter after Scott Baker J ruled that liability for manslaughter could only be imposed on the company under the principle of identification. It was this ruling which came under the scrutiny of the Court of Appeal following a reference by the Attorney General.

The Court of Appeal affirmed that companies can be liable for the offence of manslaughter. In the context of this case, liability against the company required proof of grossly negligent corporate acts or omissions that caused the death of passengers. But how was *corporate* gross negligence to be established? Rose LJ endorsed the trial judge's ruling that such a finding could only be made for this common law offence by satisfying the conditions of the identification doctrine. Accordingly, the negligence had to comprise acts or omissions perpetrated by corporate officers sufficiently senior to be identified with the company - persons whose conduct was the conduct of the company itself. It made no difference that, following *Adomako* [1995] 1 AC 171 [S&S p. 366-8], proof of gross negligence did not require proof of any state of mind, merely proof of conduct falling far below acceptable standards. At common law identification was germane not only to *mens rea* but equally to proof of a corporate *actus reus*:

> "Identification is necessary in relation to the *actus reus*, i.e. whose acts or omissions are to be attributed to the company and *R v Adomako*'s objective test in relation to gross negligence in no way affects this." (At 190.)

The decision in *A-G's Reference (No. 2 of 1999)* confounds expectations that the Privy Council's advice in *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500 might presage a general departure from the narrow identification doctrine when attributing criminal liability to companies. Rose LJ characterised Meridian merely as a case decisive for the statutory offence at issue on the particular facts. In the context of corporate manslaughter, the Court of Appeal endorsed the caution expressed generally by Lord Lowry in *C v DPP* [1996] AC 1 about judicial extension of criminal liability, which was seen very much as the preserve of Parliament.

Of wider interest for the law of manslaughter is a brief discussion of reckless manslaughter (at 185-186). Rose LJ considered that proof of either advertence to risk or indifference to risk might lead to a finding of gross negligence to a criminal degree. This confirms the view that there is very little scope, if any, for a species of manslaughter based exclusively on recklessness. [S&S p. 367-368; but see *Lidar* CA 12/11/99, unreported, discussed at [2001] JCL 145.]