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*Rights Council (UNHRC) By Sally Ramage;  
'Causation' by Sally Ramage; 'Rule of  
Law' By Sally Ramage*

# 'Death by assault'

by Sally Ramage

In the case of *The application of Reynolds) v (1) Chief Constable of Sussex (2) Independent Police Complaints Commission* [2008] EWHC 1240 (Admin), an arrested person had fallen into a coma in police custody and it was necessary, for the purposes of carrying out an effective investigation, to investigate whether the injury causing the coma had been caused whilst the victim was in police custody or before he had come into contact with the police, it was the Independent Police Complaints Commission which was under a duty to carry out that investigation.

The very distressing case *The Queen on the application of Linda Mullholland v HM Coroner for St Pancras*<sup>1</sup> concerned John Bunker, aged 46, who was estranged from his family and of no fixed abode. This was an alleged shoplifting case and Mr. Bunker was held down and became unconscious. After an ambulance was called and was declined by Mr. Bunker, the police van took him to Albany Street police station. He was taken to the custody suite, where he vomited, and Police Sergeant Clark, the custody officer, formed the view that John Bunker was in need of urgent medical attention. He instructed PC Mullally and PC Walker, to take him straight to the hospital. He was put back into PC Donaldson's van to the Royal Free Hospital, a journey taking about ten minutes. Unfortunately the treatment was unsuccessful and John Bunker died late on the following day. *A post mortem examination was performed by Dr Rouse, who found that death was due to head injury.* After the inquest found that he had died of a head injury, the police appealed. It was held that the police were not negligent.

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<sup>1</sup> [2003] EWHC 2612 (Admin). Case No: CO/950/2002 & CO/618/2003, Printed and published by SALLY RAMAGE®, Copehale, Copenhall, Stafford, ST18 9BW, UK. Registered as a Newspaper at the Post Office. © SALLY RAMAGE® 2009. All Rights Reserved. No part of this publication may be reproduced in any material form (including photocopying or storing it in any medium by electronic means and whether or not transiently or incidentally to some other's use of this publication) without the written permission of the copyright holder except in accordance with the provisions of the Copyright, Design and Patents Act 1988 or under the terms of a licence issued by the Copyright Licensing Agency, Saffron House, 6-10 Kirby Street, London, England EC1N 8TS. Application for the copyright owner's written permission to reproduce any part of this publication should be addressed to the

Key lessons for the police are that police should be trained to enter observations and recommendations into the electronic system. Custody officers should sign the Medical Attendance Register as soon as practicable after completion and in any event before the detainee is released. Not that any of this would have saved Mr. Bunker's life, although Counsel, *Stephen Simblet* (instructed by Christian Khan, Bloomsbury) for the Claimant/Applicant and *Charles Béar QC* (instructed by London Borough of Camden Legal Services) managed to obtain expert witness evidence from Mr. Watkins that there was '*a 51% chance of survival if he had received prompt, competent treatment, but with a likelihood of a disability*'. They tried hard to obtain a fresh inquest, with authorities as in *re Rapier*<sup>2</sup> and *R v HM Coroner for Coventry ex parte O'Reilly*<sup>3</sup>, the inquest being flawed in the latter case because relevant material was withheld from the jury, factual issues were not addressed. A fresh inquest can be ordered where it is necessary or desirable in the interests of justice. It might have pointed towards other potential and feasible litigation. Due to the fact that several key witnesses were absent, (especially Mr. Hart, then manager of the music shop "Richer Sounds", who chased after Mr. Bunker and was in physical contact with Mr. Bunker, possibly hitting his head against the wall) and their statement read, it was not in the public interest that these persons were not cross-examined. But let us not stop here but take a tour into this case. It was imperative that Mr. Hart the shop Manager of "Richer Sounds" music shop be cross-examined on a pivotal point.

A music shop manager ferociously chased after a man suspected of stealing a CD, and in full view of CCTV cameras, he decided to chase this man who had walked away from the shop after he was accused of shop-lifting. He physically touched Mr. Bunker. This is an assault. As Mr Bunker had walked away from the shop, he was therefore facing away from the shop. There could not have been "a a scuffle" (paragraph 1 of the Transcript of the Handed Down Judgment of Smith

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<sup>2</sup> [1988] 1 QB 26.

<sup>3</sup> [1996] 35 BMLR 48.

Bernal Wordwave Limited, 190 Fleet Street, London EC4A 2AG). Mr. Bunker had to have been accosted from behind<sup>4</sup>, leading to this being a case of manslaughter<sup>5</sup>. Mr. Hart was not a policeman. He did not see a criminal offence being committed. He was at lunch when the incident was alleged to have occurred.

This was not an armed bank robbery nor did Mr. Bunker hold up staff at the music shop with a gun. This was a suspected theft offence of value of less than £20, for which a man lost his life due to the actions of a shop employee. This was suspected theft and so Mr. Hart cannot use the defence of provocation for hurling himself at a total stranger walking away from him<sup>6</sup> Even if he were provoked, this is more reason why Mr. Hart should have been present and available for cross-examination. A £20 music compact disc ('CD') is not a physical assault on Mr. Hart- it is merely a loss of profit to his employer of not more, and certainly considerably less than £20, say £10. A man may have been killed for a suspected theft of £10 of shop stock at cost price! Mr. Bunker could not possibly have assaulted Mr. Hart the shop manager. He had his back to him. No-one testified that Mr. Hart shouted or called to Mr. Bunker to say he wanted to speak to him about an incident in the shop. No-one testified in writing or in person that they heard screaming before or even during the aggressive assault on Mr. Bunker.

This sort of dangerous behaviour often occurs in night-clubs when security staff delude themselves that they are police officers and attack persons<sup>7</sup> they suspect of offending behaviour. A bouncer in a night-club is licensed to guard prevent entry and permit exit from the property, being employed to do so by the property-owner. He is not entitled to verbally or physically assault<sup>8</sup> the customers and possibly cause death. The law expects people to exercise control over their emotions<sup>9</sup>.

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<sup>4</sup> *R v Larkin* [1942] 29 Cr. App. R. 18.

<sup>5</sup> *Fenton* (1830) 1 Lew CC 179.

<sup>6</sup> *R v Goodfellow* [1986] 83 Cr. App. R. 23.

<sup>7</sup> *Mancini v DPP* [1942] AC 1.

<sup>8</sup> *Attorney General's Reference (No. 3 of 1994)* [1996] 2 WLR 412; [1997] 3 WLR 421.

<sup>9</sup> *R v Rowland* [2003] Crim. 3636.

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As regards the insinuation that Mr. Bunker was drunk, there was no scientific evidence produced at the inquest to that effect. Every auxiliary nurse who has ever worked in a hospital knows that defecating is one of the signs of impending death, from a blow, from a fall, or from old age. Nurses will tell of people messing themselves when near death.

The following table shows that deaths in police custody are not uncommon, an unacceptable situation.

Deaths in Police Custody 1990 to 2001

Year	Deaths in UK Police Custody
2001	34
2000	35
1999	44
1998	65
1997	58
1996	53
1995	48
1994	52
1993	36
1992	47
1991	60
1990	59

Deaths in UK Prisons from 1998 to 2001 show that the situation in prisons is no better.

25 <sup>th</sup> November 2001	Joseph Crensil
22 <sup>nd</sup> November 2001	Ricky Bishop
2 <sup>nd</sup> November 2001	Michelle Allen
16 <sup>th</sup> July 2001	Derek Bennett
18 <sup>th</sup> June 2000	Cheryl Simone Hartman
5 <sup>th</sup> May 2000	Edita Pommel
23 <sup>rd</sup> March 2000	Zahid Mubarak
1 <sup>st</sup> February 2000	Keita Craig
24 <sup>th</sup> January 2000	Roberta Grabys
16 <sup>th</sup> January 2000	Asif Dad
3 <sup>rd</sup> January 2000	Ben Merabet
14 <sup>th</sup> December 1999	Ertan Uzan
6 <sup>th</sup> August 1999	Lai Hong Cheung
15 <sup>th</sup> July 1999	Leon Marshall
3 <sup>rd</sup> May 1999	Paul Jemmatt
24 <sup>th</sup> January 1999	Robert Allotey
18 <sup>th</sup> January 1999	Roger Sylvester
2 <sup>nd</sup> November 1998	Patrick Louis
31 <sup>st</sup> October 1998	David Bennett
1 <sup>st</sup> April 1998	Christopher Alder
26 <sup>th</sup> February 1998	Elliott Mitchell

# The United Nations Human Rights Council (UNHRC)

By Sally Ramage

The United Nations Human Rights Council (UNHRC) was created in 2006 following a campaign by various interests to do away with the Commission on Human Rights. Although it called for the abolition of the Commission on Human Rights the Assembly complimented the Commission on Human Rights by recognizing the work undertaken by the Commission on Human Rights and the need to preserve and build on its achievements and to redress its shortcoming. The United Nation's time-honoured system of regional groups was re-installed by the Assembly when it ordained that the Council's 47 members consist of 13 from the Group of African States, 13 from the Group of Asian States, 6 from the Group of Eastern European States, 8 from the Group of Latin American and Caribbean State, and 7 for the Group of Western European and other States.

All countries human rights are reviewed periodically and it is to be noted that the United States is scheduled for review in 2010.

The Netherland rebuffed a challenge to its non-use of capital punishment by declining to: initiate a debate on the death penalty, with a view to reaching responsive conclusions consistent with international human rights law Tunisia was the first African country to be reviewed. Tunisia is one of the most democratic societies, which shows a great respect for human rights, in the Arab world. Japan noted the very high status of women. Poland also had a positive reaction .Poland received 56 conclusions and/or recommendations from the working group. Any other abuse of force by public officials during the fulfilment of their duties, or in dereliction of duty, reported by the injured party or otherwise disclosed, is investigated in each instance through preparatory proceedings, being treated as autonomous crimes of abuse of authority or dereliction of duty, or cumulatively with other applicable offenses. Poland is a party to various international treaties dealing with prosecution of

torture. The definitions of torture contained in these conventions constitute part of the Polish legal order and are applied directly by Polish courts.

India has not ratified the Convention against Torture or its' Optional Protocol but India's response to this accusation is that no forces, armed or police function with impunity. Armed forces were under strict orders not to transgress human rights and the strictest action is taken, and incidents are swiftly adjudicated, including through courts-martial.

## Causation

by Sally Ramage

In law, causation is closely connected to ideas of responsibility and culpability. If the accused performed an act which did not contribute to the alleged consequence, then legal causation is not established. For example in the case of *R v Dalloway*<sup>10</sup>, he was driving a horse and cart without holding the reins which were lying loosely on the horse and when a person ran in front of his cart and was killed, the court decided that Dalloway could have saved the child's life if he had held the reins.

### The victim 's negligence

By his own negligence, the victim may have contributed to his own demise. Even if a victim has the excuse of a disability of blindness say, if he walks across a very busy road and is hit by a speeding car, then the driver is guilty of the deceased death, even though the deceased did a contributory thing.

### Joint enterprise

Although it is possible to imagine factual scenarios in which two people could properly be regarded as acting together, in cases where the accused supplies the victim with drugs, the defendant will not be guilty where the victim is a fully-informed and responsible adult and had freely and voluntarily self administered himself with a fatal dose, as in the case *R v Kennedy*<sup>11</sup> The House of Lords decision in *Kennedy* resolved a difficult issue in criminal law regarding participation, assisted drug-abuse injection and causation. The facts in *Kennedy* were that Kennedy handed a prepared syringe of heroin over to his friend Bosque and Bosque injected himself but later died. Kennedy was convicted of unlawful act manslaughter on the premise that by handing over a prepared syringe he

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<sup>10</sup> (1847) 2 Cox 273.

<sup>11</sup> (No 2) [2007] UKHL 38, [2007] 4 All ER 1083, [2007] 3 WLR 612, [2008] Crim LR 3, 222).

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was acting in concert with the victim in administering a noxious thing contrary to section 23 of the Offences against the Person Act 1861. If a joint enterprise is withdrawn just before the act, such a secondary party may be able to escape liability for aiding, abetting, counselling or procuring an offence if he makes an effective withdrawal before the offence is actually committed, as in *R. v. Whitehouse*.<sup>12</sup> *Whitehouse* was a Canadian case. The court asked when a party to a joint enterprise may claim to have abandoned or withdrawn from that enterprise, whether it can it be said on that a mere change of mental intention and a quitting of the scene of the crime will absolve those who participate in the commission of the crime by overt acts up to that moment from all the consequences of its accomplishment. The court said that, based on the facts of a particular case, that party ought not escape liability unless '*in the absence of exceptional circumstances, something more than a mere mental change of intention and physical change of place by those associates who wish to dissociate themselves from the consequences attendant upon their willing assistance up to the moment of the actual commission of that crime*'. It must depend upon the circumstances of each case but one essential element ought to be established in a case of this kind: '*where practicable and reasonable there must be timely communication of the intention to abandon the common purpose from those who wish to dissociate themselves from the contemplated crime to those who desire to continue in it*'.

### Similar facts

The House of Lords reviewed several cases with similar facts. The House of Lords ruled firstly, that *Finlay* was wrongly decided. There is a well established principle of English law that the free and voluntary act of a person with full capacity is not regarded as having been caused by another and therefore the defendant is not to be treated as causing the victim to act in a certain way if the victim makes a voluntary and informed decision to act in that way rather than another.

So in self-injecting cases, it is not appropriate to regard the supplier of the drug as having caused the drug to be administered. The prosecution were therefore restricted to arguing that the drug was administered by Kennedy. The logical conclusion of the fact that the deceased's decision to self-inject was free and voluntary was that the heroin was not administered by the defendant. The defendant may have encouraged or assisted the deceased to inject himself but he did not administer the drug. The House therefore rejected the analysis of the Court of Appeal in Kennedy's second appeal. This was not a case of a 'combined operation' for which Kennedy and the deceased were jointly responsible. The failure to clearly specify the unlawful act upon which liability for manslaughter

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<sup>12</sup> [1941] 1 W.W.R. 112.

was based had contributed to the uncertainty in the law under consideration and urged prosecutors to formulate precise counts.

### **Joint enterprise has no distinction of degree**

Where several persons inflict injuries on a victim, it is the totality of the injuries which are to be considered in relation to a charge of causing grievous bodily harm with intent contrary to section 18 Offences against the Person Act. It is immaterial that one person joins in the attack slightly after the others have begun to inflict injuries, which may have included the most serious single injury. He is aiding the commission of the offence and participating in it as soon as he joins in<sup>13</sup>. In *Rafferty*, the defendant did participate in the beating up of the teenager but the drowning of the teenager was a new act.

### **Unlawful act manslaughter**

The main issue in *Kennedy* was the liability for manslaughter of a person who supplies drugs to a person who injects himself with a fatal dose. where the victim is a fully informed and responsible adult who freely and voluntarily self administered himself a fatal dose, the defendant will not be guilty of manslaughter. In addition, the judgments of their Lordships provide a helpful analysis of the offences under ss 23 and 24 of the Offences Against the Person Act 1861 which relate to the malicious administration of poison etc. These offences may be committed by administering the noxious thing; causing a noxious thing to be administered; and causing a noxious thing to be taken. Their Lordships provided helpful examples of the type of activity which would fall within each of the differing ways of committing the offence of s 24 of the Act.

### **Unlawful act manslaughter.**

The problem, of course, would be finding an appropriate offence to pin upon Kennedy for his more-than-minimal contribution.<sup>14</sup> If supply was used as the unlawful act to establish a conviction for unlawful act manslaughter (based on the theory that Kennedy was working with the victim thus diminishing the 'independent act'), the test could logically be applied quite easily: 1) there was an unlawful act, 2) that act was dangerous, and 3) that act was a significant cause of death. Firstly, supply of heroin is an unlawful act under section 4(1) of the Misuse of Drugs Act 1971.<sup>15</sup> 'Dangerousness' was explained in *R v Church*<sup>16</sup> as an

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<sup>13</sup> *R. v. Grundy*, 89 Cr.App.R. 333, CA.

See also *R. v. Percival*, in relation to wounding.

<sup>14</sup> 'The connection between fault and death is too tenuous.' CMV Clarkson 'Context and culpability in involuntary manslaughter' in A. Ashworth and B. Mitchell (Eds) *Rethinking English Homicide Law* (Oxford, Oxford University Press, 2000) pp 133-165 at p 160.

<sup>15</sup> In *R v Dias* [2002] 2 Cr.App.R. 5 Keene L.J. noted that to rely on the supply of heroin as an alternative unlawful act would raise difficulties on causation (paragraph 8): '[The victim] was an adult and able to decide for himself whether or not to inject the heroin. His own action in injecting himself might well have been seen as an intervening act between the supply of the drug by the defendant and the death of [the victim].'

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unlawful act which must be such as all sober and reasonable people would inevitably recognise subject the other person to, at least, the risk of some harm resulting there from, albeit not serious harm. Would a sober and reasonable man recognise that the victim would inject the prepared syringe, which contained the dangerous substance? The House of Lords in *Kennedy* rejected the idea that an offence such as possession or supply is applicable in assisting drug-abuse injection cases because as the Court of Appeal observed in *R v Dalby* [1982] 1 WLR 425, the supply of drugs would itself have caused no harm unless the deceased had subsequently used the drugs in a form and quantity which was dangerous.<sup>17</sup>

### **Conclusion.**

As noted earlier, a substantial cause may contribute to the end result to a significant extent and must be 'more than insubstantial or insignificant' contribution.

## **RULE OF LAW**

**By Sally Ramage**

The Rule of Law is a legal-political regime under which the law restrains the government by promoting certain liberties and creating order and predictability regarding how a country functions. In the most basic sense, the rule of law is a system that attempts to protect the rights of citizens from arbitrary and abusive use of government power. The Rule of Law<sup>18</sup> is an aspect of the British Constitution, as emphasised by Dicey, which can be considered an important part of British Politics. It involves the rights of individuals. These rights are determined by legal rules and not the arbitrary behaviour of authorities. There can be no punishment unless a court decides there has been a breach of law. Everyone, regardless of their position in society, is subject to the law.

### **Trial by jury and impartiality of judges**

The critical feature to the Rule of Law is that individual liberties depend on it. Its success depends on the role of trial by jury and the impartiality of judges. It also depends on Prerogative Orders. There are three Prerogative Orders.

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<sup>16</sup> [1966] 1 Q.B. 59

<sup>17</sup> Per Waller L.J., at page 429.

<sup>18</sup> L Fuller, *The Morality of Law*, (New Haven, NY 1964). He suggested that laws must exist and those laws should be obeyed by all, including government officials; laws must be published; laws must be prospective in nature; laws should be written with reasonable clarity; law must avoid contradictions; must not be impossible; must stay constant through time to allow the formalization of rules but yet be revised when necessary; and that official action should be consistent with the declared rule.

(1) Certiorari calls a case up from an inferior court to a superior one to ensure justice is done.

(2) Prohibition prevents an inferior court from hearing a case it does not have the power to listen to.

(3) Mandamus orders an inferior court to carry out its duties.

Supporters of a written and clearly defined single, codified constitution believe that as more civil liberties are encroached on by central government, the Rule of Law is more important now than ever. British Constitution

The British Constitution can be found in a variety of documents:

- (i) Magna Carta of 1215.
- (ii) Act of Settlement of 1701.
- (iii) Laws and Customs of Parliament.
- (iv) Political conventions.
- (v) Case law.
- (vi) Constitutional matters decided in a court of law.
- (vii) Constitutional experts.

The Rule of Law and the Supremacy of Parliament are the two basic tenets of the British Constitution both tenuous at present. The development of the supremacy of Parliament stemmed from the English Civil War. Those MP's who represent the public have the power to assess, pass or reject legislation. This is the supremacy of Parliament. Parliament can pass, repeal and alter any of Britain's laws. There is no body that can declare a law passed by Parliament as unconstitutional apart from the European Court. The European Council has passed laws which Britain has to implement. Therefore, the theory of the Supremacy of Parliament whereby a government can do as it wishes, does, in fact, have limitations<sup>19</sup>.

### Separation of Power

The separation of power is not clear in British Politics<sup>20</sup>. Government functions through three bodies-the Legislature, or Parliament, which makes laws; the Executive, or government Cabinet, which puts laws into effect and plans policy; and the Judiciary, or Law Lords and Judicial Committee of the Privy Council, which decides on cases that arise out of the laws.

### Conventions of a constitution

British Politics and the British Constitution have many political conventions attached to it which have developed and been accepted over the years. A convention is an accepted way in which things are done. They are not written down in law but tend to be old, established practices – the way they have always been done. There have been times when

<sup>19</sup> See J. Rawls, *A Theory of Justice*, (Harvard University Press, Cambridge 1999).

<sup>20</sup> See A. C. Hutchinson, ed., *Critical Legal Studies*, (Roman & Littlefield, New Jersey 1989).

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conventions have been given legal status. From the time of the English Civil War when Parliament clashed with king over finance, it was accepted that money bills/acts came from the House of Commons by the Parliament Act 1911. For instance, It is a convention that the queen will accept the legislation passed by the government. It is a convention that if something in government goes wrong, the cabinet will support the minister. Conventions can be changed, as they have no legal status. But they tend to be tolerated as they allow the system to work.

### **Judicial Independence**

Judicial independence is an important part of the structure of British Politics. Democratic rights depend on decisions taken within courts. Courts are independent of outside pressure and interference i.e. from the government. The judiciary is free from liability as they simply enforce the law and not create that law, except when common law applies.