

## Handout of Legal Directions

### Verdicts

1. I now turn to direct you in law on the verdicts you may return. You have a hard copy of what I am now saying, because you may well need to refer to it later. You are asked to consider 5 different verdicts. The same verdict should, obviously, be returned in the case of Dodi as is returned in the case of Diana. The 5 possible verdicts are:
  - (1) Unlawful killing (grossly negligent driving of following vehicles);
  - (2) Unlawful killing (grossly negligent driving of the Mercedes);
  - (3) Unlawful killing (grossly negligent driving of the following vehicles and of the Mercedes);
  - (4) Accidental death;
  - (5) Open verdict.
  
2. You should, first of all, consider the first three verdicts together. If you consider that none of those verdicts should be returned, you should consider the fourth verdict, and then the fifth verdict.

### *Unlawful Killing by Gross Negligence Manslaughter: General*

3. I have indicated that it would be open to you to find unlawful killing by gross negligence on the part of drivers or riders following the Mercedes or by grossly negligent driving of the Mercedes, or both. Such unlawful killing is a form of the very serious crime of manslaughter. What then are the ingredients of unlawful killing by gross negligence? Before you can return a verdict of unlawful killing, you must be satisfied so you are sure:
  - (i) First, that the person or persons whose driving you are considering owed a duty of care to the deceased – here, that would be the duty that one road user normally owes to another;
  - (ii) Second, that the person or persons whose driving you are considering breached that duty of care. Put shortly, whether his or their driving was negligent – that is to say, fell below the standard of driving expected of a reasonably competent driver;
  - (iii) Third, that the breach of duty you have identified caused the deaths. It would not need to be the sole cause of the deaths; it would be sufficient for the breach of duty to be a significant contributory cause of the crash and deaths;
  - (iv) Fourth, if you are sure of all those things, you must go on to consider whether the breach of duty should be characterised as gross negligence and therefore a crime. The essence of the matter is whether, having regard to the risk of death involved, the conduct of the person or persons whose driving you are considering was so bad in all the circumstances as to amount to a criminal act.

4. What that means is that you would have to be sure that the breach of duty that you have identified was so gross as to amount to the very serious crime of manslaughter. The standard of proof that applies when you consider questions of gross negligence manslaughter is the criminal standard, namely you must be satisfied so that you are sure in respect of each of the elements that I have identified.
5. It is not enough, as I am sure you are now aware, to prove mere negligence. Ordinarily, negligence gives rise only to claims for damages. But to consider a person guilty of manslaughter you have to go a lot further. You must be sure that he had been grossly negligent. Now what does 'grossly negligent' mean? In broad terms, as I have said, the question is posed in this way; you have to consider whether, having regard to the risk of death involved, the conduct of the driver or drivers in question was so bad as, in all the circumstances, to amount in your judgment to a criminal act or omission. You might find that a rather circular definition. It is apparent from what I have already said that it is not enough that the conduct calls for compensation. Nor is it enough that you feel that the acts or omissions of the driver or drivers in question would call in your judgment for some form of punishment. What you have to be convinced about is that the negligence was bad enough to be condemned as the grave crime of manslaughter.
6. In considering the extent to which the driving in question must deviate from mere breach of duty and mere negligence, if I may call it that, you might derive some assistance from the word 'reckless'. You probably have a pretty clear understanding of that word. The allegation of fault in this case could only fairly be categorised as grossly negligent if the driver or drivers, in your judgment, was or were wholly indifferent to an obvious risk of death or actually foresaw that risk of death but determined to run it nonetheless. Only then could you reach the threshold of contemplating that the negligent action is of such a heinous or flagrant character as to be fairly categorised as deserving of severe punishment for the grave crime of manslaughter.
7. Another way of looking at it is this. You should embark upon the task of placing yourself in the position of the driver of the Mercedes, on the one hand, or a following vehicle on the other, going along the expressway, and approaching the Alma tunnel. It is in that context that, when considering an individual's action, you must reflect upon whether there was an obvious, serious risk of death to the passengers in the Mercedes and that the driver or drivers concerned were either wholly indifferent to that risk or, having recognised that risk to be present, deliberately chose to run the risk by continuing what they were doing.

#### *Separate Treatment*

8. Although, as you may well think, the driving of the Mercedes and of those vehicles following it were linked, you must consider the driving of the Mercedes quite separately from that of the following vehicles. The question for you when looking at the Mercedes is whether the driver was grossly negligent in his driving in a respect that caused or contributed to the crash and the resulting deaths.

9. The position concerning the following vehicles should also be looked at separately. It may be that you will be able to isolate the conduct of individual drivers or riders (even if you do not know their names) with sufficient clarity to enable you to decide one way or another whether the driving was grossly negligent and caused or contributed to the crash and consequent deaths. But you are also entitled to look at the conduct of a number of riders and drivers of following vehicles together if you are satisfied that they were engaged in a 'joint enterprise'. That does not require an agreement in advance by those people: the question, in essence, is 'were they in it together?' You may rely upon conduct of particular persons involved to support a conclusion they were 'in it together' in the sense that they were consciously chasing the Mercedes in concert with the others.

#### *Approach to the First Three Verdicts*

10. You may decide that you are sure that the crash and deaths were caused by grossly negligent driving on the part of one or more of the following drivers, but not on the part of the Mercedes driver. If so, you should return the first verdict: Unlawful killing (grossly negligent driving of the following vehicles).
11. Secondly, you may decide that you are sure that the crash and deaths were caused by grossly negligent driving on the part of the Mercedes driver, but not on the part of the following vehicles. If so, you should return the second verdict: Unlawful killing (grossly negligent driving of the Mercedes).
12. Thirdly, you may decide that you are sure that the crash and deaths were caused by grossly negligent driving on the part of the Mercedes driver and the following vehicles, looking at them quite separately. If so, you should return the third verdict: Unlawful killing (grossly negligent driving of the following vehicles and of the Mercedes).

#### *Accidental Death*

13. You may conclude that, whilst there was bad driving in evidence on the approach to the Alma Tunnel, it was not so bad that you can be sure that these deaths were caused by the gross negligence of anyone. If that is the position, you must go on to consider the question of accidental death.
14. The standard of proof required for you to return a verdict of accidental death is different. It is the civil standard of 'balance of probabilities', which means no more than that something is more likely than not. You will return verdicts of accidental death if you are satisfied on the balance of probabilities that the crash and subsequent deaths were the result of an accident.
15. When considering whether these deaths were the result of an accident, you must look at all of the evidence, including such evidence as there may be which might provide support for the contention that the crash was deliberately staged.

### *Open Verdict*

16. If you unanimously decide that the evidence does not support any of the verdicts which I have identified, then you are entitled to return an open verdict. The definition of this verdict is that the evidence is insufficient to support any substantive verdict to the relevant standard of proof.
17. If that were to be the situation, it would be a failure of the evidence, not of yours, but do not use an open verdict because you cannot establish a peripheral point about the crash. Do not use an open verdict because you disagree amongst yourselves. And do not use an open verdict as a mark of censure or disapproval. Your duty is to find the facts and reach conclusions on the evidence, and this must transcend any feelings you have in the matter.

## Narrative Conclusions

18. I shall now provide you with two Inquisitions: one for Dodi and one for Diana. Some uncontroversial matters have been filled in. You are at liberty to amend or correct those details if you think I have it wrong. Your very important task is to complete two parts of each Inquisition: parts 3 and 4. Part 4 is where you write the verdict. You will write one of the five verdicts I have given to you. Part 3 is headed 'Time, Place and Circumstances of Death'. As you will see, a passage has been typed in. I shall deal with Diana's Inquisition for simplicity's sake:

'Diana, Princess of Wales, died at the Pitie-Salpetriere Hospital in Paris at around 4am on 31 August 1997, as the result of a motor crash which occurred in the Alma Underpass in Paris on 31 August 1997 at around 12.22am. The crash was caused or contributed to by:'

19. You will then consider each of the following and consider whether it can be said that any of them was a matter which made a causal contribution to the crash. You should write in any of them which you consider, on the balance of probabilities, made a material contribution to the crash. You can write in as many or as few or as you wish. They are:

- (i) the speed and manner of driving of the Mercedes;
- (ii) the speed and manner of driving of the following vehicles;
- (iii) the manner of driving of a white Fiat Uno ahead of the Mercedes;
- (iv) the impairment of the judgment of the driver of the Mercedes through alcohol;
- (v) one or more bright lights.

20. You will then see the words: 'In addition, the death of the deceased was caused or contributed to by:' There are then three possible causes which might (or might not) be regarded as contributing to death:

- (i) the fact that the deceased was not wearing a seatbelt;
- (ii) the fact that the Mercedes struck the pillar in the Alma tunnel (rather than colliding with something else);

In Diana's case only

- (iii) the loss of an opportunity to render medical treatment.

Again, you may write in as many or as few of those as you find established.

21. These are potential causes of death as distinct from potential causes of the crash. The difference in general is a matter of common sense. Failure to wear a seatbelt cannot have caused this crash, but it may have contributed to the deaths. There was also some evidence that the fact of striking the pillar, rather than, for example, the opposite wall, increased the forces involved and the likelihood of death.

You will note that the option to include a reference to medical treatment only arises in the case of Diana, otherwise all the factors will be the same.