

# Recklessness and the law

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THE case of Sam Ke Ting has made many of us wonder if we could also be charged under the Road Transport Act for accidentally knocking someone down while driving, causing their death.

In the amendments to the Act made in October 2020, S.41(1) – causing death by reckless or dangerous driving – was included as one of the chargeable offences for micromobility vehicles, including bicycles, electric bicycles and tricycles.

It is worth noting though that prior to the amendment, despite the use of the word “driving” and “motor vehicles” in these provisions, they were equally applicable to and chargeable against road users riding bicycles, electric bicycles, and tricycles.

In Sam’s case, the debate revolves around the legal interpretation of “reckless” or “dangerous”. In granting Sam leave to appeal her conviction, the Court of Appeal allowed six questions of law to be raised by the defence, including whether the offence, specifically the “cause of a dangerous situation”, was due to the driver or the cyclists, and whether the speed of the driver at 44.5kph is deemed dangerous compared to the presence of the cyclists on the road.

Since the Act does not define “reckless” or “dangerous”, interpretation is determined by the courts. To be guilty of reckless driving, the driver (defendant) must have created an obvious and serious risk of injury to the person, or damage to property, and must either have given no thought to the possibility of that obvious risk or have seen the risk and nevertheless decided to run it.

One may then ask: “What about the basikal lajak cyclists who were aged 13 to 16 years old? Couldn’t they be considered reckless?”

The unsafe use of modified bicycles or antisocial use of a vehicle could also be charged under Section 431 of the Penal Code (Mischief by injury to public road, bridge or river): “Whoever commits mischief by doing any act which renders, or which he knows to be likely to render, any public road, bridge, river, or channel, impassable or less safe for travelling or conveying property, shall be punished with imprisonment for a term which may extend to five years or with fine or with both.”

However, tackling the issue of youths and children who engage in such practices requires a more holistic and nuanced approach.

We can look at the scheme initiated by the Cleveland Police in England for inspiration. In 2019, Cleveland Police launched the UK’S first scheme tackling youngsters’ antisocial cycling behaviour after numerous complaints from the public about them riding at speed through shopping centres and builtup areas.

The police introduced £30 fines and sent the youngsters on a course to teach them to ride responsibly if they were caught riding anti-socially or dangerously. The fines paid were channelled to a local charity to benefit the neighbourhood, and the cyclists received a certificate after attending a mandatory three-hour cycling proficiency course.

Moving forward, it is in the interest of public road safety that we should rigorously regulate the unsafe use of modified bicycles and also the antisocial use of vehicles (including mat rempit) through law as well as the adoption of best practices.

Community leaders and school administrators must work together with law enforcement agencies to educate the youngsters. Youths should also be encouraged to take a leading role in curbing this anti-social behaviour among their peers.

Hopefully, by addressing this problem, we can prevent cases similar to Sam’s from happening again.

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