

GROSS NEGLIGENCE MANSLAUGHTER

'The present law relating to gross negligence manslaughter serves neither the defendant nor the criminal justice system.' Discuss the accuracy of this statement. [25]

In civil law, an individual who fails to take the care a reasonable person would exercise in any given situation is described as negligent. There are degrees of negligence - if it is negligent for a nurse to leave a very sick patient alone for ten minutes, then it will clearly be more negligent to leave that patient alone for an hour. Negligence which is so severe as to deserve punishment under the criminal law is described as gross negligence and if it leads to death can give rise to liability for gross negligence manslaughter.

common law offence

R v Adomako is the leading case on GNM and sets out the key elements.

D was the anaesthetist for a patient who was having an operation on a detached retina. During the operation, one of the tubes supplying oxygen to the patient became disconnected and the D failed to notice until some minutes later when the patient suffered a heart attack caused by the lack of oxygen. The patient suffered brain damage and died 6 months later. Doctors giving evidence in the trial said that the competent Anaesthetist would have noticed the disconnection in 15 seconds and that the failure of the D was 'abysmal'. The conviction of gross negligence was upheld by the HoL - essay

Actus Reus

(a) A 'duty' of care

In Adomako the House of Lords approved the duty of care in **R v Stone and Dobinson 1977**. Lord Mackay explained that the "ordinary principles of law of negligence apply to ascertain whether or not D has been in breach of a duty of care towards the victim".

Stones sister came to live with the Ds who were mentally slow and barely able to look after themselves. She was anorexic and eventually became bedridden and incapable of looking after herself. Neither D was able to summon medical help. The sister eventually died from malnutrition. The Ds were charged with gross negligence manslaughter. Stone owed a duty of care to his sister. Dobinson had undertaken some of the care too. The duty was to help her or call for help. The failure to do either of this meant, unfairly, both were found guilty of manslaughter

J.C. Smith, writes: 'Where a negligent act is alleged, the existence of a duty of care is unlikely to cause a problem; everyone must be under a duty not to do acts imperilling the lives of others, in the absence of circumstances of justification or excuse.'

Lord Atkinson in Donoghue v Stevenson (1932) laid down what has been called the "neighbour principle". "You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then, in law, is my neighbour? The answer seems to be persons who are so closely

and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question." The civil concept of negligence applies to the criminal law.

This results in gross negligence manslaughter having a wide scope as it covers many activities.

R v Singh 1999 D was a landlord of property in which a faulty gas fire caused the deaths of tenants. It was recognised that there was a duty on D to manage and maintain property properly

R v Litchfield 1998 D was the owner and master of a sailing ship. He sailed knowing that the engines might fail because of contamination to the fuel. The ship was blown onto rocks and 3 crew members died. It was held that D held a duty to the crew

R v Wacker 2003 - Does the duty cover criminal enterprises. D agreed to bring 60 illegal immigrants to England. They were put in the back of his lorry for a cross - channel ferry crossing. The only air into the lorry was through a small vent and it was agreed that this vent should be closed at certain times to prevent the immigrants from being discovered. D closed the vent before boarding the ferry. The crossing took an hour longer than usual and at Dover the Custom officers found that 58 of the immigrants were dead. D argued that it was impossible to determine the extent of his duty, but the CoA held that it was a simple matter on facts. D knew that the safety of the immigrants depended on his own actions in relation to the vent and he clearly assumed the duty of care. D's conviction of manslaughter was upheld

R v Evans 2009 - Consider that in some cases not only is there a duty of care but there can also be a duty to act. On what basis did D have a duty to act? link duty of care and duty to act. duty to act is only applicable to some but duty of care applies to everyone because everyone owes a duty of care

The appellant was convicted of gross negligence manslaughter along with her mother in relation to the death of her 17 - year - old sister, Carly Townsend who died of a heroin overdose. The appellant was 8 years older than her sister. The appellant, her mother and Carly all had a history of heroin addiction. Carly had just been released on licence from a detention and treatment order and a condition of the licence was that she resided at her mother's house. The appellant moved in with her mother after her boyfriend was sent to prison. The appellant bought some heroin and gave it to Carly. Carly self-injected the heroin and then developed symptoms which the appellant, from her own experience, recognised as being consistent with an overdose. The appellant and her mother decided not to seek medical assistance for fear of getting into trouble. Carly died. The appellant appealed against her conviction for gross negligence manslaughter on the grounds that the judge had left it to the jury to decide whether the appellant owed a duty of care and that it was wrong to leave this to the jury where this would involve an extension of principles relating to duty of care.

(b) Breach of the duty of care causing death. The defendant's conduct must have gone below the standard of care expected of a reasonable and sober person in the same profession. At this point the D breaches that duty.

Who were the D's compared to in the following cases?

Andrews v DPP 1937 The appellant drove a van above the speed limit and overtook another car. As he did so he struck a pedestrian and killed him. Compared to another van driver

R v Litchfield 1998 compared to another sailor

R v Adomako 1994 compared to an anaesthetist

Normal rules of causation apply (factual and legal) and Intervening acts

(c) Gross negligence which the jury consider justifies criminal conviction

R v Bateman D was a doctor who attended a woman for the birth of her child at her home. During childbirth, part of the woman's uterus came away. D did not send V to hospital for 5 days, and she later died. D's convictions were quashed on the basis that he had carried out the normal procedures that any competent doctor would have done. He had not been grossly negligent. he carried out normal procedure other doctors carried out at the times that was the procedure they were taught so not negligent. Lord Hewart said that the facts In the opinion of the jury, the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the state and conduct deserving of punishment

R v Adomako 1994 the HoL approved of this test and stressed that It was a matter for the jury. the jury has to decide whether having regard to the risk of death Involved, the conduct of the D was so bad In all the circumstances as to amount. In their judgement, to a criminal act or omission. has to be a risk of death Involved. not risk of harm.

In considering this issue there must be a risk of death. Lord MacKay in **R v Adomako** approved **R v Stone and Dobinson** and **R v Bateman**

R v Misra & Srivastava (2004). The Ds challenged their conviction as they said it breached which **Article of ECHR?** V had an operation on his knee. The 2 defendants were senior house doctors who were responsible for the post - operative care of the V. they failed to identify and treat V for an infection which occurred after the operation. V died from the infection. The defendants were convicted and appealed on the basis that the elements of gross negligence manslaughter were uncertain and so breached Article 7 of the European Convention on Human Rights. This says that

no one shall be guilty of any criminal offence on account of an act or omission which did not amount to a criminal offence at the time when it was committed. The CoA held that Adomako had clearly laid down the elements of the gross negligence manslaughter, so there was no breach of Article 7. the D conviction was upheld

In R v Rose 2017 the C of A stated there must be an obvious and serious risk of death from D's conduct. Was her conviction upheld?

Rose was an optometrist who negligently failed to perform her statutory duty to conduct an intra - ocular examination on her seven - year - old patient. As a result, she failed to discover the clear indications of a life - threatening risk to the child who subsequently died of hydrocephalus. CoA quashed her conviction on the basis that in the circumstances, where the deceased had displayed no symptoms such as headaches or nausea, the appellant's failure to comply with her statutory duty, imposed for the purpose of detecting injury, disease or abnormality, could not be said to create a situation where it was reasonably foreseeable that an obvious and serious risk of death arose.

Mens Rea

The mens rea of the offence is gross negligence – whether the risk of death would have been obvious to a reasonable person (objective)

Lord Mackay in the House of Lords in Adomako stated that he was not prepared to give a detailed definition of gross negligence, but he does give some explanation, pointing out that: “the jury must go on to consider 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”. This is known as the circular test

Criticisms

- a) **Circular test** the fact that the jury must decide whether to convict the D of manslaughter by deciding whether his conduct was criminal is regarded as a circular test. The starting point of 'is the D conduct criminal?' is almost the same as saying 'has he committed a crime?' there is no sequence of reasoning, and instead the argument goes round in a circle. -Include It under the MR
- b) **Inconsistent verdicts** it leaves the jury to decide a question of law. Normally, the judge decides if the D conduct is capable of being a crime and the jury then decides on the facts whether the D has committed the alleged crime. In gross negligence

manslaughter the jury decides whether the conduct is capable of being criminal. They may lead to different decisions in very similar circumstances. It would make the law fairer if the judge made the decision as to whether the D conduct was capable of amounting to gross negligence manslaughter - Include It under the MR (just a general point. can Include It at the end of your essay)

- c) **Civil test for negligence** It appears that the tests for negligence in civil law apply to criminal law. This is clear from the R v Stone and Dobinson when the Ds when the D were guilty of gross negligence manslaughter where they had given very limited care to Stone's adult sister and failed to obtain medical help. It is probable that such a situation would not give rise to liability in civil negligence. So, if the civil tests for negligence apply in criminal cases, could this mean that a D in the same situation would not now be found guilty of gross negligence manslaughter? -Include It under the AR of the duty of care
- d) **Risk of death** used to be a criticism that it was unclear whether risk had to be of death or whether risk of serious injury was sufficient to prove gross negligence manslaughter -r v misra

Complete the table setting out briefly the proposals for reform

<p>Law Commission 1996</p>	<p>Proposed that instead of gross negligence manslaughter there should be 2 categories of killing involving negligence. The proposed offences were 'reckless killing' and 'killing by gross carelessness'. Although the government issued a paper on reform in 2000, no other action was taken on the LC proposals. However, the government did later ask the LC to review the whole of law of homicide</p>
<p>Law Commission 2006</p>	<p>LC didn't continue its previous recommendation of having 2 categories of killing where there had been negligence. Instead, it recommended that there should only be gross negligence manslaughter which would be committed where e.g., a person by their conduct cause the death of another, a risk that their conduct will cause death would be obvious to a reasonable person in their position, they can appreciate that the risk at the material time and, their conduct falls far below what can reasonably be expected of them in the circumstances. It makes it clear that the risk must be to cause death. a risk of serious injury is not sufficient. Prosecution would have to prove that the D could appreciate the risk at the time. This would prevent those with mental disabilities or younger defendants being convicted where they were not capable of appreciating the risk. This wasn't implemented.</p>