**Model answer on Gross Negligence Manslaughter**

Elements Exercise

TASK

* Use four different coloured highlighters.
* Begin by choosing colours for 1. Definition, 2. Explanation, 3. Case law & Authority and 4. Application. Highlight these words so that you know which is which.
* Go through the model answer, highlighting the various DECA elements: definition, explanation, caselaw & authority and application.

Definition Explanation Caselaw & authority Application

Dylan could be guilty of gross negligence manslaughter (‘GNM’), which is a form of involuntary manslaughter.

GNM occurs where D does not intend to harm the V, but the V dies as a result D’s negligence, and the degree of negligence is sufficiently serious as to make him criminally liable for the death.

*R v Adomako* established that there are four things that need to be proved for GNM. These are:

1) There is a duty of care

2) There has been a breach of duty

3) The breach of duty amounts to gross negligence

4) The breach of duty caused death.

**1. Duty of care**

In *R v Adomako*, Lord McKay said that the ordinary rules of negligence should apply when deciding if a duty of care exists towards another person and whether there has been a breach of that duty.

In *Donoghue v Stevenson*, Lord Atkin defined the ‘neighbour principle’ for duty of care:

* you must take care to avoid acts or omissions that a reasonable man might reasonably foresee would injure your neighbour.
* your neighbour is anyone so closely and directly affected by your actions that a reasonable man might have them in their mind when carrying out the acts or omissions in question.

Since this case, the courts have held there to be a duty of care in a range of situations. For example, in *Evans,* a woman who supplied drugs to her sister was judged to owe a duty to summon assistance when she became ill. This duty arose through her creating a life-threatening situation by supplying drugs.

In Dylan’s case, he could be said to have a duty of care towards his girlfriend, Samantha for two reasons. The duty could be based on the neighbour principle, as because she is a passenger in his car, she is someone closely and directly affected by his actions when he is driving (Donoghue v Stevenson). He should therefore be driving safely and not use his mobile phone. The duty could also be based on the fact that he has created a life-threatening situation by using his phone whilst driving (Evans).

**2. Breach of duty of care**

Breach of duty *‘is the omission to do something which a reasonable man… would do, or doing something which a prudent and reasonable man would not do’*(Blythe v Birmingham Waterworks). This is an objective test and will be based on the defendant’s position and skills at the time of the breach.

Because he is driving, Dylan will be judged against the standard of the reasonable driver (Nettleship v Western). The reasonable driver would not have used his phone whilst driving as that is illegal and therefore Dylan has breached his duty of care by texting at the time of the collision with the tree.

**3. Gross negligence**

In *Bateman,* the court defined gross negligence as ‘showing such disregard for the life and safety of others as to amount to a crime’. The court in *Singh*, confirmed in *Misra and Srivastava,* modified this to say that the breach of duty must be so bad that there is a ‘serious and obvious risk of death’ and not just the health and safety of the victim. By using his phone while driving, Dylan has shown disregard for the health and safety of Samantha who was a passenger in his car. Texting while driving will impair his concentration on the road and this could lead to him crashing. Texting would therefore expose anyone in the car or on the road to a serious risk of death which would be obvious to a reasonable man. Dylan’s actions therefore satisfy the test of gross negligence.

4. **Breach of duty causing death**

Firstly, the prosecution must prove that Dylan was the factual cause of Samantha’s death. The question that must be asked is “but for the defendant’s actions, would the consequence have occurred?” If the answer is no, then the defendant is the factual cause of death (Pagett). But for Dylan using his phone whilst driving, he wouldn’t have collided with the tree leaving Samantha in a critical condition, later dying in hospital. He is therefore the factual cause of her death.

The prosecution must also prove that Dylan was the legal cause of death as only proving factual causation doesn’t mean that he caused the death. To establish legal causation, Dylan needs to be the “substantial and operating cause” of death (*Smith)*. This means Dylan’s contribution must have been more than trivial, however he does not have to be the sole cause, or even the main cause (*R v Benge)*. The fact that Samantha was put in a critical condition as a result of the crash would mean that Dylan using his phone whilst driving, which led to him losing control of the car, would be judged to have made more than a trivial contribution to Samantha’s death, particularly as she died as a result of her injuries.

However, a junior doctor failed to identify signs of internal bleeding in Samantha. This raises the issue that this may be a *novus actus interveniens* which could break the chain of causation between Dylan using his phone and Samantha’s death. To break the chain of causation, the standard of treatment would need to be ‘unforeseeable’ and ‘so independent of his acts, and in itself so potent in causing death, that the D’s contribution can be regarded as insignificant’ (Cheshire). Only ‘palpably wrong’ medical treatment will break the chain of causation (Jordan). In this situation, it is unlikely that the court would think that the failure of the junior doctor to identify the internal bleeding is independent of Dylan losing control of the car as it was the crash that led to the internal bleeding and it was foreseeable that a complication like this could occur. Therefore, applying the law to the facts of the case, it would seem that it was Dylan’s texting whilst driving that led to Samantha’s death as this put her in a critical condition. The medical treatment would not break the chain of causation.

For GNM, the prosecution do not need to prove Dylan had any particular *mens rea*, so it does not matter what his state of mind was while texting (the Southall Train Crash case).

The facts of the case therefore indicate that Dylan could be convicted of GNM. If found guilty of this offence, Dylan could receive a discretionary sentence up to a maximum of life imprisonment.

1084 words