

Gross Negligence Manslaughter

The leading case

Adomako 1995




Gross Negligence Manslaughter

Analysis

Adomako established 4 criteria for GNM:

- 1. Duty of Care**
- 2. Breach of Duty**
- 3. Breach of duty amounts to gross negligence**
- 4. Breach of duty causes death**

■ Also, you need to mention

5. No need to prove *mens rea*

Gross Negligence Manslaughter

1. DUTY OF CARE

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Duty of Care


Donoghue v Stevenson 1932 applies:

per Lord Atkin

Specified as the correct test in Adomako

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?...

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Duty of Care

Donoghue v Stevenson continued

...persons who are so closely and directly affected by my act that I ought reasonably to have them in my contemplation as being affected when I am directing my mind to the acts or omissions in question.'

NB Not the Caparo v Dickman test

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Duty of Care

Gross negligence manslaughter can therefore cover a wide array of situations e.g.

- Voluntary assumption of responsibility (Stone v Dobinson 1977)
- Voluntarily creating a dangerous situation (Miller, Evans)
- Contractual liability (Pittwood, Singh etc.)
- Complicit in crime (Wacker, Willoughby)
- Etc. etc.

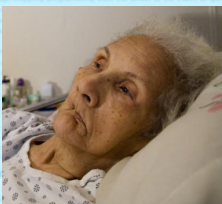
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Duty of Care

Voluntary assumption of responsibility

Stone v Dobinson 1977



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Duty of Care

Voluntarily creating a dangerous situation

Miller 1983




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Duty of Care

Voluntarily creating a life-threatening danger

Gemma Evans 2009



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Duty of Care - contract

- Contract to keep 3rd parties safe
- Pittwood 1902**




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Duty of Care - contract

- Employment Contract
- Litchfield 1998**



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Duty of Care - contract

- Tenancy Contract
- Singh 1999**




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in digital content, creating new design experiences, as does the term "Web 2.0". It is crucial to know that there are subtle but significant differences between the two, and it is important to be aware of them. Simply put, Web 2.0 is a term used to describe the current state of the Internet, while Web 1.0 is a term used to describe the state of the Internet in the past.

Duty of Care

D and V complicit in crime

Wacker 2002



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Duty of Care

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Willoughby 2005



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Duty of Care



D and V complicit in crime

2. BREACH OF DUTY

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The reasonable man

- Blythe v Birmingham Waterworks 1856**
- 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.'**

Test applied objectively


- What is a reasonable standard of care is decided objectively**
- Nettleship v Weston 1971**
 - 'The learner driver may be doing his best, but his incompetent best is not good enough. He must drive in as good a manner as a driver of skill, experience and care.'**
 - In a criminal trial, what is reasonable will be decided by the jury**



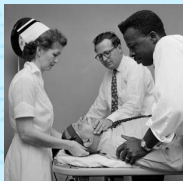
Breach of Duty

Different classes of 'reasonable man'

- Professionals**
- The Bolam Test**
 - Bolam v Friern Hospital Management Committee 1957**



Breach of Duty





Different classes of reasonable man

- The Bolam Test:**
 - A professional must act to the standard of a reasonable professional professing to have and exercising that skill
 - A professional must act in accordance with a competent body of professional opinion

Breach of Duty

Different classes of 'reasonable man'

- People with specialist skill
- Philip v Whiteley 1938**


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Breach of Duty

The standard of care is task specific

- Motorists
- Nettleship v Weston 1971**



'The learner driver may be doing his best, but his incompetent best is not good enough. He must drive in as good a manner as a driver of skill, experience and care.'


Lord Denning



Breach of Duty

The standard of care is task-specific


- Sport
- **Smolden v Whitworth & Nolan 1997**



Breach of Duty

The standard of care is task-specific



- **Dangerous jobs**
- **Green v Fibreglass Ltd [1958]**
- **Some jobs are potentially so dangerous that even an amateur must do it to the standard of a professional**



Breach

Risk factors


- **Risk factors are circumstances which raise or lower the standard of care in order to determine what standard of care is appropriate**

Risk Factors

...digital content, making new design experiences, as does the term "Web 2.0". It is worth to know that there are subtle differences between the terms "Web 2.0" and "Web 3.0". It is worth to know that there are subtle differences between the terms "Web 2.0" and "Web 3.0". It is worth to know that there are subtle differences between the terms "Web 2.0" and "Web 3.0".


- Need to guard against risks within reasonable contemplation
- Haley v London Electricity Board 1965



Risk Factors

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- D must take more care if there's a risk of catastrophic harm
- Paris v Stepney Borough Council 1951



3. BREACH OF DUTY AMOUNTS TO GROSS NEGLIGENCE


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Adomako: per Lord Mackay

'The jury will have to consider whether the extent to which the D'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 as criminal...'



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Adomako: per Lord Mackay cont.

'...it is supremely a jury question ... whether, having regard to the risk of death involved, the conduct of D was so bad in all the circumstances as to amount in their judgment to a criminal act or omission'



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Bateman 1925

The test for gross negligence

'in the opinion of the jury, the negligence of the D went beyond a mere matter of compensation between the subjects and showed such disregard for the life and safety of others as to amount to a crime against the state and conduct deserving punishment'

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Bateman 1925

The test for gross negligence

'in the opinion of the jury, the negligence of the D went *beyond a mere matter of compensation between the subjects* and showed such *disregard for the life and safety of others* as to amount to a *crime against the state* and conduct deserving punishment'

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Simple lack of care not enough

Andrews 1937

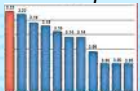


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Andrews 1937 Per Lord Atkin

'Simple lack of care which will constitute civil liability is not enough. For the purposes of the criminal law, there are degrees of negligence and a *high degree of negligence* is required to be proven'



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Risk of Death

Clarified in

R v Singh 1999

The circumstances must be such that a reasonably prudent person would have foreseen a serious and obvious risk not merely of injury or even of serious injury but of death.

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Risk of Death

This is the definitive test

The circumstances must be such that a reasonably prudent person would have foreseen a serious and obvious risk not merely of injury or even of serious injury but of death.

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Risk of Death

Singh confirmed as the correct test in

Misra and Sribastava 2004

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Gross negligence

Finlay 2001




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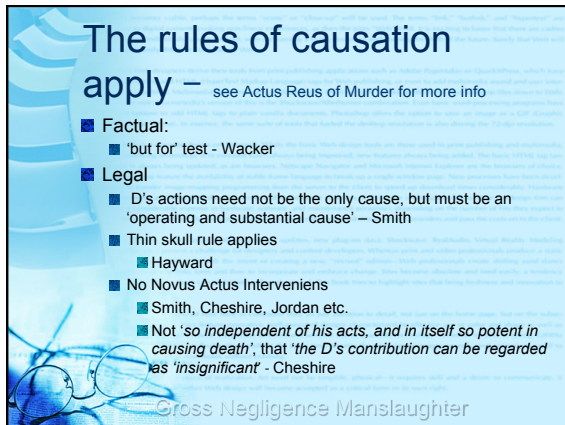
Gross negligence

Edwards 2001

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4. BREACH OF DUTY CAUSES DEATH

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The rules of causation apply – see Actus Reus of Murder for more info

- **Factual:**
 - 'but for' test - Wacker
- **Legal**
 - D's actions need not be the only cause, but must be an 'operating and substantial cause' – Smith
 - Thin skull rule applies
 - Hayward
 - No Novus Actus Interveniens
 - Smith, Cheshire, Jordan etc.
 - Not 'so independent of his acts, and in itself so potent in causing death', that 'the D's contribution can be regarded as insignificant' - Cheshire

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5. NO NEED TO PROVE MENS REA

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Mens rea

- **Involuntary manslaughter, so no intention to kill**
- **No need to prove mens rea**
- **AG's Ref No 2 of 1999**



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