**Model answer on Gross Negligence Manslaughter**

Hector could be guilty of gross negligence manslaughter (‘GNM’), which is a form of involuntary manslaughter. Involuntary manslaughter is where D does not intend to kill, but is sufficiently blameworthy to be found guilty of a crime.

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 *Singh,* a landlord owed a duty of care to his tenant to ensure that the property was safe, and he breached his duty when he failed to ensure a gas fire was safe. [Pick a case that is relevant to the case study.]

[Apply] Hector could be said to owe a duty of care to Jenny for several reasons. Firstly, as she is his tenant and he is her landlord, he owes her a duty of care due to the ‘neighbour principle’; it is reasonably foreseeable that by failing to ensure that the roof is safe, he risks causing injury to her, as she will be ‘closely and directly affected’ by his omission as she lives in the house under the dangerous roof. The other reason is that he is her landlord, and as such owes her a duty of care to ensure that the house is reasonably safe (Singh).

Hector’s failure to get the roof fixed is an omission. Normally an omission will not create criminal liability in law, as there is no general duty to act. However, there are well-established exceptions to this so that Hector would be liable. Hector is Jenny’s landlord so he has a contract with her whereby she pays him rent and he, in return, must provide her with reasonably safe accommodation (Singh). This case is analogous to the case of Miller, where the D accidentally allowed a dangerous situation to start (setting fire to a mattress) and failed to do anything to put it right; the court’s judgment was that, as soon as the D became aware of what he had started, he had a duty of care to act as a reasonable man would act. A reasonable man would have put it out or called the fire brigade. Hector became aware that the roof beams were rotten, as Jenny pointed out to him over a period of 6 months that the beams were rotten and part of the roof had already collapsed. He therefore owed a duty of care to Jenny to get the roof fixed as it was foreseeable that more of the roof might collapse.

**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). The standard of care which is appropriate is determined objectively based on D’s position and skills. If D fails to use the appropriate standard of care, he is in breach of his duty.

[Apply} Because he is a landlord, Hector will be judged against the standard of the reasonable landlord (Singh). A landlord need not be able to fix the building himself, but a reasonable landlord would have taken steps to ensure the roof was safe by getting a roof repair expert to replace the rotten beams promptly. By failing to do this despite Jenny having told him about her concerns about the rotten beams and the leaks over a period of 6 months, Hector has breached his duty of care. As her landlord, he must take reasonable care to ensure she is safe living in his house.

Risk factors can raise or lower the standard of care that is appropriate. As there is an obvious risk of catastrophic harm e.g. the roof collapsing,, Hector must react appropriately and quickly.

**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 a reasonable man would foresee a ‘serious and obvious risk of death’ and not just a risk to the health and safety of the victim.

[Apply] By failing to ensure the roof was safe despite knowing it was rotten, Hector has shown disregard for the health and safety of Jenny, who was his tenant living in his house. A reasonable man would have foreseen that rotten beams supporting something as heavy as a roof posed a serious and obvious risk of death to Jenny, because she lived under it. Hector’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 [apply] Hector failing to have his roof repaired, the roof would not have collapsed on Jenny who was living underneath it. 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, Hector needs to be the “substantial and operating cause” of death (*Smith)*. This means Hector’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 Jenny died immediately when the roof collapsed on her as she stood under it, and keeping the roof in safe repair was Hector’s responsibility as her landlord would mean that a court would judge his omission to have made more than a trivial contribution to Jenny’s death.

However, Jenny had a medical condition which meant that she had a particularly fragile skull. This means that a normal person might not have been killed instantly when the roof collapsed and might have been saved. This does not affect Hector’s liability, as the ‘Eggshell skull’ rule applies so that the Defendant must take their victim as they find them (Hayward). This means that it does not matter that Hector was unaware of Jenny’s condition and that a different person might have survived the roof collapsing; Hector’s omission will still be the legal cause of her death as it would have posed a ‘serious and obvious risk of death’ to anyone, whether or not they had a fragile skull.

For GNM, the prosecution do not need to prove Hector had any particular *mens rea*, so it does not matter what his state of mind was while he failed to do anything to try to fix the roof (the Southall Train Crash case).

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