**Gross Negligence Manslaughter (GMN)**

**Knowledge Organiser**

GNM is a type of Involuntary Manslaughter

* + D did not intend death but is sufficiently blameworthy to be worthy of punishment
  + Maximum sentence - life
* **Definition**

A person dies as a result of the negligence of another and the degree of negligence by the D is sufficiently serious as to make him criminally liable for the death

***Adomako 1993*** *- The leading case - anaesthetist left patient while oxygen ventilator disconnected –* GNM is the proper test where there is a breach of duty – apply the ordinary principles of negligence – whether the negligence is ‘gross’ is ‘supremely a jury question’ – can be an act or omission

*Adomako* established 4 elements:

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

In addition to this, you should mention a 5th point:

5. There is no need to prove *mens rea*

* + **1. Duty of Care**

***Adomako*** per Lord MacKay - ***Donoghue v Stevenson*** applies

* The test for whether there is a D of C is whether it’s reasonably foreseeable that V will be affected by D’s acts/omissions

***Winter 2010*** *– Fireworks went off in fireworks company & killed cameraman making training film* – test of D of C is reasonable foreseeability

* Usually an omission
  + Voluntary assumption of responsibility

***Stone & Dobinson*** *– Ds were a couple with low intelligence – took in man’s anorexic sister – tried to get help but didn’t manage it* – Ds owed D of C to sister because they tried to help her.

* + Voluntarily creating a dangerous situation

***Miller 1982*** *– tramp set fire to mattress – went next door to go back to sleep –* starting a chain of events can create a duty to act to stop them getting out of hand

* + Voluntarily creating a life-threatening danger – duty to act

***Gemma Evans*** *2009 – D gave heroin to half-sister (V) – V became ill – D didn’t summon ambulance – V died –* Lord Judge – where D creates life-threatening state of affairs, it creates a D of C to take reasonable steps to save their life

* + Contractual duty
    - Job is to keep people safe

***Pittwood 1902*** *– D’s job was to open/sut railway crossing gate – forgot to shut and went for lunch – haycart squashed by train –* found guilty of manslaughter – D of C owed because of his job

* + - Employer/employee

***Litchfield 1998*** *– Master of sailing ship owed D of C to crew to keep safe – fuel contaminated and D knew engine failure was likely – 3 crew died in shipwreck* – D owed D of C as employer

* + - Landlord/tenant

***Singh 1999*** *– Landlord didn’t fix faulty gas fire – tenant died of carbon monoxide poisoning –* sufficient proximity in law between landlord & tenant - D under a duty to call expert help

* + Complicit in crime

***Wacker 2002*** *– D smuggled 60 illegal Chinese immigrants into UK in lorry – D closed air vent – ferry delayed by an hour – 58 died of asphyxiation* - *ex turpi causa* (it is wrong to allow someone to benefit from their crime) doesn’t apply in criminal law, so V can get justice – D was factual cause of death as ‘but for’ him shutting the ventilator, Vs would not have died.

***Willoughby 2005*** *- D asked V to set fire to D’s pub so that he could claim insurance – V died in explosion* – D owed D of C as there was sufficient proximity

* 2. **Breach of duty**

The normal rules of breach apply. What standard of care was required? If that standard of care has not been reached, the D is in breach.

* **Definition**: 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 ‘reasonable man’ has the same set of skills as the D and is in the same situation as the D. In a criminal trial, the ‘reasonable man’ is the jury.

* **Different classes of reasonable man**

The standard of care may vary according to who the D is.

* + Professionals

***Bolam v Friern*** *- V suffererd from depression – given ECT – fractured pelvis* – court created the Bolam test:

* + - A professional must exercise *‘the standard of the ordinary skilled man exercising and professing to have that special skill.’*
    - A professional must act ‘in accordance with a competent body of professional opinion’.
  + People lacking specialist skill

Judged according to standard of care of reasonably competent person with that skill.

***Philips v Whiteley 1938*** *– D (jeweler) not liable after V got blood poisoning after having ears pierced* – instruments were clean by the standard of the reasonable jeweler (even though they might not be acceptable in a clinic).

* **The standard of care is task-specific**

The appropriate standard of care normally depends upon what the D is doing

* + Motorists

***Nettleship v Weston 1971*** *– Learner driver crashed & injured teacher* – standard of care is that of a reasonable driver

* + Sport

In sport, the level of care depends on the circumstances, including whether the player is an amateur (lower standard acceptable) or pro (higher standard expected).

***Smolden v Whitworth and Nolan 1997*** *– D (referee) failed to control a scrum properly* – D owed duty of care to players to keep them safe

* + Dangerous job

Some jobs are so dangerous an amateur must do them to the standard of a professional.

***Green v Fibreglass 1958*** – electrical rewiring is potentially so dangerous that it must be done to the standard of a professional.

* Risk factors

Risk factors are circumstances which raise or lower the standard of care.

* + The D must take appropriate precautions against a known risk

***Haley v London Electricity Board*** *– hole dug in pavement with only a hammer to warn pedestrians – Blind V fell in – left him deaf* – there was a sufficiently large number of blind people for precautions to taken to protect them

* + D must take more care if he knows there is a risk of catastrophic harm

***Paris v Stepney 1951 -*** *C blind in one eye – employers didn’t give safety goggles – C lost other eye* – because the risk to the C was higher, the employer should have taken a higher standard of care.

* + **3. Gross negligence**

Negligence is ‘gross’ if a reasonable man would have foreseen a serious and obvious risk of **death** *(Singh) (Misra & Sribastava)*

This is an objective test .

***Adomako 1995*** *– (see above) –* jury decides whether negligence is ‘gross’ – Having regard to the risk of death, did it amount to a criminal act/omission?

***Bateman 1925*** *–* gross = *‘in the opinion of the jury, the negligence of D went beyond a mere matter of mere 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’*

**Andrews 1937** - *‘Simple lack of care which will constitute civil liability is not enough … a high degree of negligence is required to be proven.’*

***Singh 1999*** – *Landlord didn’t check gas fire – tenant died from carbon monoxide -* 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

***Misra and Sribastava 2004*** – *doctors failed to treat infection after knee operation* - confirmed the objective test in Singh - risk must be of death

Contrast *Finlay* (not) and *Edwards* (gross negligence)

***Finlay 2001*** *– scoutmaster took scouts up Snowdon – 13-year-old fell & died* – some negligence, but did not show such disregard for life as to amount to gross negligence.

***Edwards 2001*** *– Couple allowed 7-year-old & friend to play on railway bridge – both killed when couple failed to warn them a train was coming* – ignored serious & obvious risk of death, so GNM.

* + **4. Breach of duty causes death**

The normal rules of causation apply:

* Factual:
  + ‘but for’ test – ***Wacker*** *(see above p2)*
* 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*
    - 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

See Knowledge organiser for Murder for more details on causation.

* + **5. No need to prove *mens rea***

As it’s negligence, there is no need for prosecution to prove *mens rea*; it doesn’t matter what the D was thinking – what matters is what the reasonable man would have been thinking.

**Southall train crash case – *AG’s Ref No 2 of 1999*** *– train crash killed 7 in Southall –* CA confirmed that D can be convicted without evidence of *mens rea*