

R v Adomako (1994)

- D was an anaesthetist in charge of a patient during an eye operation
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KEY CASE!

Gross Negligence Manslaughter (GNM)

Negligence is a civil concept and is part of tort law. However, it can form part of the criminal offence of involuntary manslaughter if it is decided that the negligence is so serious that it is 'gross.' Therefore, gross negligence manslaughter covers those situations where D's actions have gone beyond compensation i.e. death has occurred. Very few criminal offences contain negligence. GNM being the most common.

The defendant owes a duty of care to the victim, has breached that duty in a particularly negligent way causing the victim's death as a result. The offence can be committed through an act or an omission, neither of which need to be committed.

R v Khan and Khan (1998)

- Ds sold heroin to a teenage girl at their flat; first time she had used heroin and she overdosed in the presence of the Ds
- V fell into a coma and Ds left the flat leaving the girl alone when it was clear that she required medical assistance
- They returned to the flat the following day and found her dead
- If the V had received medical assistance she would not have died
- Ds were convicted of gross negligence manslaughter and appealed contending that a drug dealer does not owe a duty of care to summon medical assistance to his client
- Court did not rule out the possibility of a duty of care being owed by drug dealers => convictions were quashed

R v Litchfield (1997)

- D was the owner of a massive sailing ship
- D sailed knowing that the engines might fail because of contamination to the fuel
- Ship was blown onto rocks => 3 crew members died
- D owed a duty for the safety of the crew

R v Singh (1999)

- D was a landlord of a property => has a duty of maintaining property
- Needs to see the gas supply checked + has a certificate that it is functioning properly
- Faulty gas fire caused Vs' death
- Duty to the tenants to maintain the property properly
- Failed to do so => gross negligence manslaughter

R v Evans (2009)

- D bought some heroin and gave it to V
- V self-injected the heroin and then developed symptoms which D, from her own experience, recognised as being consistent with an overdose
- D and her mother decided not to seek medical assistance for fear of getting into trouble
- V died
- D was convicted of gross negligence manslaughter along with her mother in relation to the death of her 17-year-old sister (died of a heroin overdose)

R v Pittwood (1902)

- A railway crossing gate-keeper forgot to shut the gate and a passing haycart was struck by a train
- Cart's driver died
- D was convicted of manslaughter on the bases of 'gross and criminal negligence' because he failed to do his job (his duty)

R v Gibbins and Proctor (1938)

- Father had to look after his 7-year-old daughter
- Locked her in a basement, didn't feed her
- Girl died => father had failed to carry out his duty of parenting => was liable for her death

Negligence is a civil concept that developed from the case of *Donoghue v Stevenson* (1932), where Lord Atkin's Neighbour principle stated that; the neighbour principle has since been modernised by *Caparo v Dickman* (1990)

If D has caused death through an omission where he has a duty to act but fails in that duty, he could be liable for GNM

R v Willoughby (2005)

- D owned an old disused pub + had become increasingly in debt and was unable to sell the pub
- He engaged V to help him set fire to the pub in order to claim on the insurance
- During the course of igniting the fire an explosion occurred resulting in the building collapsing on V killing him
- D was convicted of gross negligence manslaughter
- D appealed contending that no duty of care was owed in the circumstances

The principle of *ex turpi causa* is used in civil law (upon which GNM is based) and refers to the fact that legal action cannot be taken if founded on immoral or illegal conduct. This works well in civil law because it prevents compensation being awarded for something illegal or immoral. However, public policy has decided that it would not be appropriate to apply this principle to the criminal law.

R v Wacker (2003)

- D agreed to smuggle 60 illegal Chinese immigrants into the UK from the Netherlands.
- The immigrants were to be sealed into D's lorry.
- Before going aboard the ferry to England D closed the vent to make it more difficult for the immigrants to be discovered
- Ferry was delayed => 5 hours later when the lorry was unloaded at Dover customs officials ordered the container to be opened and found 58 dead bodies with only 2 survivors
- D was convicted of 58 counts of manslaughter

The existence of a duty of care by D to V

Types of duties; if a person is found to have had one of the following types of duties, he/she may be found liable for her actions

Contractual

Statutory (arising from specific relationship)

Voluntary assumption of duty/responsibility

R v Stone and Dobinson (1977)

- A couple assumed a duty of care for an elderly sick relative; they could've easily discharged their duty by calling for help/providing even basic care
- Neglected the relative (didn't feed her; didn't bathe her) => she died severely emaciated

Through public position/office

R v Dytham (1979)

A citizen was getting kicked to death in front of a nightclub
A police officer failed to observe his duty of preserving the queen's peace (took no actions)

Arising from dangerous conduct/situation

R v Miller (1983)

- D accidentally started a fire on a mattress in a room; went to the other room instead of extinguishing the fire
- D was liable as he admitted he was aware of the fire, but chose to do nothing

A duty of care is owed if

Damage was reasonably foreseeable

There was proximity between C and D in terms of time, space or relationship

It was fair just and reasonable to impose a duty on D

Breach of duty means D has fallen below the proper standard of care expected of a reasonable person in the same or similar circumstances

This is an objective test and is therefore a set standard applied to all

**An act or omission
(conduct) in breach**

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CAUSATION	
Factual causation	Legal causation
D factually performed the physical element of the crime. But for D's actions, the consequence would not have happened	D's conduct was legally wrong. D must be the operative and substantial cause of the harm. There must not be a new intervening act breaking the chain of events.
'But for test' used in R v Pagett and R v White	<u>R v Smith (1961)</u> <ul style="list-style-type: none"> Two soldiers had a fight => on is stabbed V was carried to hospital; medical staff gave him artificial respiration by pressing his chest => injury worsened Smith was guilty because the wound on V's lung was still 'operating' (not healed up) and it was the substantial cause of V's death
<u>R v Pagett (1983)</u> <ul style="list-style-type: none"> D was in a shootout with the police (had committed an armed robbery); D used his pregnant girlfriend as a human shield => both she and the baby die Baby was not born => not a human being => one count of murder But for D using his girlfriend as a human shield she wouldn't have died => D is liable 	<u>R v Jordan (1956)</u> <ul style="list-style-type: none"> V was stabbed in stomach, hospital treatment => wound's healing well Suffered an allergic reaction due to being given an antibiotic; next day another doctor gave a large dose of the antibiotic V died due to an allergic reaction => doctor's actions are the intervening act => D was not guilty of murder
<u>R v White (1910)</u> <ul style="list-style-type: none"> D was V's son; D wanted inheritance from his mother (V) D put cyanide in V's tea V suffered a heart attack before the drank tea and died; death was inevitable But for D putting cyanide in V's tea, she would have died anyway => not guilty of murder because chain of events is broken 	<u>R v Blaue (1975)</u> <ul style="list-style-type: none"> D stabs a young woman, who is a Jehovah Witness => she needs blood transfusion Religion prohibits her blood transfusion => she dies (being a Jehovah Witness made it more fatal) D's guilty because he has to take V as he found her (had to respect religion)

The 'thin skull' rule means that D should take V as he finds them. D is responsible for any injuries arising from a pre-existing medical condition.

New intervening act

- *Novus actus interveniens* = new intervening act
- The new intervening act breaks the chain of events, which resulted from D's conduct.
- The new intervening act must be sufficiently independent from D's actions.
- The new intervening act must be serious enough to break the chain of causation.
- Examples: actions of a third party; V's own actions; natural but unpredictable event

<u>Actions of a third party</u>	<u>V's own actions</u>	<u>Natural but unpredictable event</u>
<ul style="list-style-type: none"> • A third party's actions break the chain of events. <p><u>R v Jordan (1956)</u></p> <ul style="list-style-type: none"> • V was stabbed in stomach, hospital treatment => wound's healing well • Suffered an allergic reaction due to being given an antibiotic; next day another doctor gave a large dose of the antibiotic • V died due to an allergic reaction => doctor's actions are the intervening act => D was not guilty of murder <p><u>R v Smith (1961)</u></p> <ul style="list-style-type: none"> • Two soldiers had a fight => on is stabbed • V was carried to hospital; medical staff gave him artificial respiration by pressing his chest => injury worsened • Smith was guilty because the wound on V's lung was still 'operating' (not healed up) and it was the substantial cause of V's death 	<ul style="list-style-type: none"> • V's own actions break the chain of events. • Necessary to consider the surrounding circumstances. • Considers whether V's actions broke the chain of events due to a minor threat. <p><u>R v Roberts (1972)</u></p> <ul style="list-style-type: none"> • Girl jumped from a car (driving between 20-40 mph) in order to escape from D's sexual advancements • D was held liable for her injuries • ABH under s47 of Offences Against the Person Act 1861 • V's actions were reasonable + foreseeable <p><u>R v Williams (1992)</u></p> <ul style="list-style-type: none"> • A hitch-hiker jumped from D's car and died from head injuries caused by his head hitting the ground • D attempted to rob V (steal his wallet) • Car was travelling at 30 mph • V's act had to be reasonably foreseeable and had to be proportionate to the threat • Did V's actions break the chain of events? 	<ul style="list-style-type: none"> • Tsunami • Earthquake • Flood • Heart attack

R v Stone and Dobinson (1977)

- A couple assumed a duty of care for an elderly sick relative; they could've easily discharged their duty by calling for help/providing even basic care
- Neglected the relative (didn't feed her; didn't bathe her) => she died severely emaciated

R v Misra and Srivastava (2004)

- V had a knee operation
- Ds were senior house doctors responsible for V's post-operation care
- Ds failed to identify a post-operation infection threat and V died
- Ds were convicted of gross negligence manslaughter, but Ds appealed that the elements of the offence were uncertain and so breached Art. 7 of the ECHR stating that no one shall be guilty of a crime if it was not an offence at the time it was committed
- Court followed R v Adomako (1994) => not sufficient to show a risk of bodily injury or injury to health => conviction upheld

Creating a serious and obvious risk of death

Risk to V's 'health and welfare'

There has been confusion what this means in criminal law over the decades

There must be a risk of death from Ds act or omissions

Current law

Not totally clear whether there has to be a risk of death through D's conduct or whether the risk need only be to V's 'health and welfare'

'Such disregard for the life and safety of others as to amount to a crime against the state, deserving punishment'

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R v Bateman (1925)

- D was a doctor who attended V for the birth of her child at her home
- Part of V's uterus came away during the birth
- D didn't send V to hospital for 5 days => V died
- D had carried out the normal procedures any competent doctor would've carried
- D's convictions of gross negligence was quashed

