

## Involuntary Manslaughter

Involuntary manslaughter is an unlawful killing where the defendant does not have the intention to kill or cause GBH. The lack of intention is what distinguishes involuntary manslaughter from murder. There are two ways of committing involuntary manslaughter. These are unlawful act manslaughter and Gross negligence manslaughter. The maximum sentence for involuntary manslaughter is life imprisonment, thus giving the judge discretion to impose any sentence, which is suitable for the particular circumstances of the offence. In some cases, the judge may even pass a non-custodial sentence.

### Unlawful act manslaughter

Unlawful act manslaughter is also known as constructive manslaughter because the liability for the death is built up or constructed from the facts that the defendant has done a dangerous unlawful act, which caused the death. This makes the defendant liable, even though he did not realise that death or injury might occur. The *actus reus* of unlawful act manslaughter are:

- The defendant must do an unlawful act
- The act must be dangerous on an objective test
- The act must cause death
- The act was substantial cause of death

The death must be caused by an unlawful act, which must be a criminal offence. A civil wrong is not enough, **FRANKLIN (1883)**. There must be an act: an omission cannot create liability for unlawful act manslaughter, **LOWE (1973)**. In many cases, the unlawful act will be some kind of assault, but any criminal offence can form the unlawful act, provided it involves an act which is dangerous in the sense that it is likely to cause some injury. The unlawful act must be dangerous on an objective test. From the case of **CHURCH (1966)**, this is an objective test – would a sober and reasonable person realise the risk of some harm? The risk need only be of some harm – not of serious harm, **LARKIN (1943)**. An act aimed at property can still be such that a sober and reasonable person would realise the risk of some harm, **GOODFELLOW (1986)**. There must be a risk of physical harm; mere fear is not enough, **DAWSON (1985)**. The unlawful act must cause the death. The normal rules of causation apply; the act must be the physical and legal cause of death. An intervening act such as the victim self-injecting a drug breaks the chain of causation, **DALBY (1982)**. However, where the defendant helps with the injection, the link is established, **ROGERS (2003)**.

It is vital to understand that the *mens rea* for involuntary manslaughter concerns the initial crime itself, and can be intention or recklessness. The defendant must have the *mens rea* for the unlawful act but it is not necessary for the defendant to realise that the act is unlawful or dangerous. Although most cases involve some form of assault that requires intention or subjective recklessness, in **DPP v NEWBURY (1976)**, the initial offence (which was not identified in the case) was surely of criminal damage, for which Caldwell or objective recklessness was formerly required. However, following **R v G (2003)**, this kind of recklessness is no longer applicable.

## **Gross Negligence manslaughter**

Gross negligence manslaughter is another way of committing manslaughter. It is completely different from unlawful act manslaughter. It is committed where the defendant owes the victim a duty of care but breaches it in a very negligent way, causing the death of the victim. The breach of duty can be committed by an act or an omission, which does not have to be unlawful. The leading case on gross negligence manslaughter is **ADOMAKO (1994)**. The *actus reus* of gross negligence manslaughter is:

- the existence of a duty of care towards the victim
- a breach of that duty of care which causes death
- gross negligence which the jury considers to be criminal

Following **R v ADOMAKO**, it now appears that duty of care is based simply on the 'neighbour' test in **DONOGHUE v STEVENSON**. The test is whether it was reasonably foreseeable that the victim would be injured. A duty of care has been held to apply to a doctor towards his patient, **ADOMAKO (1994)**. The civil test is very much wider than the duty situations in which the criminal law recognises can lead to criminal liability for an omission. This suggests that gross negligence manslaughter may cover a wide range of situations, e.g. maintaining a gas fire, **SINGH (1999)**. The test for breach of duty is again the tort test. The defendant's conduct must have been below the standard expected of a reasonable person. The fact that a defendant has been negligent is not enough to convict him of gross negligence manslaughter. The negligence has to be 'gross'. In **BATEMAN (1925)** which involved negligent treatment of patient by a doctor, it was stated that the negligence is 'gross' when it goes 'beyond a matter of mere compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving of punishment'.

In **ADOMAKO (1994)** the HoFL approved this test and stressed that it was matter for the jury. The jury had to decide whether, having regard to the risk of death involved, the conduct of the defendant was as bad in all the circumstances as to amount, in their judgment, to a criminal act or omission. It is also not clear, if the test is that there had to be a risk of death through the defendant's conduct or whether the risk need only be to 'health and welfare' of the victim, **STONE AND DOBINSON (1977)**. Or 'disregard for the life and safety of others', **BATEMAN (1925)**. The *mens rea* required is negligence, rather than recklessness as it used to be.