

DEVELOPMENT OF GROSS NEGLIGENCE MANSLAUGHTER

Gross Negligence Manslaughter	Subjective Reckless Manslaughter
<p>R v Bateman (1925) 19 Cr App R 8 – A doctor’s patient died during labour. Gross negligence was recognised as the test for manslaughter by the Court of Appeal. The prosecution had to prove that:</p> <p>“A owed a duty to B to take care, that that duty was not discharged, ... that the default caused the death of B ... and that A’s negligence amounted to a crime ... [I]n order to establish criminal liability the facts must be such that, in the opinion of the jury, the negligence of the accused went beyond a mere matter of 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.”</p> <p>Andrews v DPP [1937] 2 All ER 552 – The defendant was convicted of manslaughter resulting from the reckless and dangerous driving of a motor car. The House of Lords affirmed the test in <i>Bateman</i>.</p>	<p>Prior to the House of Lords’ decision in <i>Seymour</i> (1983) there was authority that it was manslaughter to kill another with the appropriate degree of subjective recklessness: <i>Pike</i> [1961] Crim LR 547, CCA; <i>Gray v Barr</i> [1971] 2 All ER 949 at 961, per Salmon LJ; <i>Stone and Dobinson</i> [1977] QB 354, [1977] 2 All ER 341, CA.</p> <p>- Richard Card, <i>Card, Cross and Jones: Criminal Law</i>, 1995, pp227-228.</p>
<p>R v Lawrence [1981] 1 All ER 974 – A motor cycle rider convicted of causing death by reckless driving. The House of Lords held that the mens rea of the offence was driving in such a manner without giving any thought to the risk or, having recognised that it exists, nevertheless taking the risk. It was for the jury to decide whether the risk created by the accused’s driving was both obvious and serious, the standard being that of the ordinary prudent motorist as represented by themselves.</p> <p>R v Seymour [1983] 2 All ER 1058 – The defendant tried to push his girlfriend’s car out of the way using his lorry and she was crushed between the two vehicles. The defendant was convicted of manslaughter by reckless driving. The House of Lords held that the necessary mens rea for reckless manslaughter was <i>Caldwell</i> recklessness as to some harm, ie, there must be an obvious and serious risk of some harm, and (a) either the defendant must have realised that risk and decided to take it, or (b) the defendant gave no thought to what was an obvious and serious risk of some harm.</p> <p>Kong Chuek Kwan v R (1985) 82 Cr App R 18 – The Privy Council applied the new form of reckless manslaughter to a case involving a collision between two hydrofoils in Hong Kong harbour. It was held that the direction suggested in <i>R v Lawrence</i>, upheld in <i>R v Seymour</i>, applied in the present case. The Privy Council stated that this was a ‘comprehensive’ test for the purposes of all involuntary manslaughter which did not fall under the heading of constructive manslaughter.</p>	

R v Prentice and others [1993] 4 All ER 935 – The Court of Appeal held that except in motor manslaughter, the ingredients of involuntary manslaughter by breach of duty which needed to be proved were the existence of the duty; a breach of the duty causing death; gross negligence which the jury considered justified a criminal conviction. The test based on recklessness appropriate in motor manslaughter was inappropriate to manslaughter by breach of duty.

R v Adomako [1994] 3 All ER 79 – An anaesthetist failed to notice the disconnection of the tube from a ventilator supplying oxygen. The House of Lords held that a defendant was properly convicted of involuntary manslaughter by breach of duty if the jury found that the defendant was in breach of a duty of care towards the victim who died, that the breach of duty caused the death of the victim, and that the breach of duty was such as to be characterised as gross negligence and therefore a crime. *R v Seymour* was overruled and *R v Lawrence* not followed.

“This arises when the accused is aware that her conduct involves a risk of causing death (or, probably, serious injury) and she unreasonably takes that risk. ... Until ten years ago many cases of this type were treated as falling within the definition of murder. However, ... [in *Moloney*] the House of Lords held that cases in which the defendant may have foreseen that death or really serious injury were highly probable to result from her act, without intending such consequences, would no longer constitute murder. These cases must then have fallen, by default, into the scope of the offence of manslaughter.”

- Law Commission, *Legislating the Criminal Code: Involuntary Manslaughter* (Law Com. No. 237, 1996) paras 2.26-2.27.

R v Lidar CA 11/11/99 – The defendant had an argument with the victim, who was half leaning into the defendant’s car, and drove off. The victim was crushed by the rear wheel. The defendant was convicted of manslaughter. The Court of Appeal held that in order to be liable, the defendant must have (a) foreseen a risk of serious injury or death occurring, and (b) assessed that risk as at least highly probable to occur.