

Answers to self-test questions

Chapter 6

- 1. Explain the difference between involuntary manslaughter, murder, and voluntary manslaughter.**

Involuntary manslaughter requires the defendant to have committed the *actus reus* of murder (i.e., unlawfully caused the death of a person), without the *mens rea* for murder (i.e., without any intention to kill or cause GBH).

Murder requires the defendant to have unlawfully killed a person with intention to kill or cause GBH.

Voluntary manslaughter arises where the defendant commits murder but has a special defence, such as loss of control, diminished responsibility or suicide pact, which reduces liability to manslaughter.

- 2. Name the four ingredients of unlawful act manslaughter. Cite an authority to support this.**

According to *DPP v Newbury and Jones* (1977):

- i. The defendant must intentionally do an act
- ii. The act must be unlawful
- iii. The act must be objectively dangerous
- iv. The act must cause death

- 3. What is the test for dangerousness? Cite an authority to support this.**

The test for dangerousness is an objective test from the case of *Church* (1966):

“...the unlawful act must be such as all sober and reasonable people would inevitably recognise must subject the other person to, at least, the risk of some harm resulting therefrom, albeit not serious harm” (per Edmund Davies J).

- 4. What constitutes an unlawful act for the purposes of unlawful act manslaughter?**

The act must be a criminal offence: *Franklin* (1883) and it must be a positive act: *Lowe* (1973).

5. Will an omission be sufficient as a basis of liability for: (i) unlawful act manslaughter? (ii) gross negligence manslaughter?

- (i) No – see *Lowe* (1973)
- (ii) Yes

6. Will a defendant be guilty of unlawful act manslaughter if he supplies drugs to the victim who then consumes the drugs and dies? Cite an authority to support this.

Where the defendant merely supplies the drugs to the victim, proving the unlawful act element of unlawful act manslaughter becomes problematic. The supplier of the drug is not guilty of unlawful act manslaughter because the free and voluntary act of self-administration breaks the chain of causation: *Kennedy* (No. 2) (2007).

7. Name the ingredients of gross negligence manslaughter. Cite an authority to support this.

Gross negligence manslaughter requires proof of five ingredients (see *Rose* (2017)):

- (i) The defendant owed an existing duty of care to the victim
- (ii) The defendant negligently breached that duty of care
- (iii) It was reasonably foreseeable that the breach of that duty gave rise to a serious and obvious risk of death
- (iv) The breach of that duty caused the death of the victim
- (v) The circumstances of the breach were truly exceptionally bad and so reprehensible as to justify the conclusion that it amounted to grossly negligence and required criminal sanction.

8. Define gross negligence.

The test for gross negligence comes from *Adomako* (1995): “...whether having regard to the risk of death involved, the conduct of the defendant was so bad in

all the circumstances as to amount in their judgment to a criminal act or omission". In *Rose* (2017), the Court of Appeal held that the prosecution must prove that the circumstances of the breach were truly exceptionally bad and so reprehensible as to justify the conclusion that it amounted to grossly negligence and required criminal sanction.

9. Does reckless manslaughter exist? Explain your answer.

It is now generally accepted that subjective reckless manslaughter does exist as a result of the case of *Lidar* (1999).

10. Explain how a corporation might be liable for manslaughter.

A corporation might be liable for corporate manslaughter under the Corporate Manslaughter and Corporate Homicide Act 2007.

Section 1(3) provides that the liability of an organisation is dependent upon a substantial element of the breach of duty being due to the way in which the activities of the organisation are managed or organised by senior management.

The organisation must owe a “relevant duty of care” to the victim. These duties of care are set out under s.2(1) of the Act.

The definition of a “gross” breach is given in s.1(4)(b) and requires the conduct of the organisation to fall “far below” what is reasonably expected of an organisation in the circumstances. There are a number of factors for the jury to consider in deciding whether the conduct of the defendant organisation amounts to a gross breach of duty. These are set out under s.8 of the Act.