

# Charles criminal liability for the unlawful homicide

[Law](#), [Crime](#)



Involuntary manslaughter is an unlawful killing where the DF doesn't have the intention to kill or to cause GBH. There are two ways of committing involuntary manslaughter - unlawful act manslaughter, and gross negligence manslaughter. Unlawful or constructive act manslaughter is when the defendant has caused the death of the victim by committing an unlawful act.

The burden of proof rests with the prosecution to prove beyond all reasonable doubt that the DF is guilty of committing this offence. The actus reus is the unlawful killing of a human being under the Queen's peace, but it must also include an unlawful act dangerousness which causes the death of the victim.

The dead body is the body of Derek who drowned, which was an unlawful killing as he drowned and no one saved him from drowning, and it was under the Queen's peace as it wasn't during a time of war, Charles and Derek weren't soldiers on duty and they had no official duty to kill such as in the recent case of a supposed terrorist on a train who police had permission to shoot as they thought he was going to kill the whole train - by killing one person they were saving all the rest of the people on the train.

The unlawful act must be an act, not an omission, which was taken from the case of *Lowe*, and in the case of *Franklin* it was said that the act must be criminal. With the case of Charles and Derek, when Charles chased Derek it could be argued that Derek would be subjected to some sort of physical injury, which can constitute an assault - which is classed as an unlawful criminal act, so this proves that the unlawful act part of the actus reus is satisfied.

If you look at the case of Roberts, the fact that the girl feared an assault which made her jump out the car and get badly injured, the same principle could be applied in this scenario - because Derek was frightened he was going to get badly hurt by Charles, he made the decision to jump in to the river to avoid this from occurring - even though he knew that he could not swim and drowned as a result of those actions.

In Church (1965) the CA laid down an objective test for dangerousness for a verdict of manslaughter that whether an act is dangerous then means that it is likely to cause injury to another person. This is decided objectively - it must be an act that a sober and reasonable person would regard as dangerous, and would cause some harm. From the case of Goodfellow (1986) it was decided that the unlawful act does not have to be directed at V or at a person, so long as it is dangerous and likely to cause some harm.

This is where the case of charging Charles with constructive manslaughter could fail, as it can't be judged as to whether his act could cause injury to Derek. The criminal act that Charles did was to make Derek frightened to attack him, but Charles didn't actually inflict any harm or injuries on Derek so his act may be classed as dangerous enough to cause death. For is an assault criminal enough to cause death of another - and under normal circumstances the victim probably wouldn't have died just from the fear of injury from another.

For if the river hadn't been there, Derek would have probably been still alive - so it could be said that through no fault of Charles, Derek died, as Charles actions weren't sufficiently dangerous enough to say that foresight of death

was virtually certain from the assault. To prove that the act caused the death, we must however prove it in both fact and law before looking at whether it is the most likely offence for Charles to be charged with. To find if the unlawful act caused the death in law, the but for test must be used.

But for Charles chasing after Derek and making Derek frightened, Derek wouldn't have jumped in to the river. However, to find the causation in law, Charles actions must be a more than minimal but not substantial cause of Dereks death. However, it wasn't the chase that caused Derek's death - it was the fact that Charles saw Derek drowning and failed to act to save him was the contributing factor of the death as he realised Derek couldn't swim but failed to act.

So Charles omission to help prevent Derek from drowning was the guilty act, as it was Charles duty to prevent Derek from drowning as Charles knew that Derek couldn't swim from the fact that he was struggling to stay afloat, and Charles put him in that position by making Derek anticipate an attack and shouting at him. So the main fault here was an omission which in involuntary manslaughter is more useful in gross negligence.

Also, the chain of causation can be broken by the actions of the victim, so the fact that Derek jumped in to the river could mean a break in causation as Charles may not have anticipated the fact that the chase may have lead to the river, and because Derek couldn't swim it could be argued that it was highly unforeseeable that Derek would jump in to water knowing full well he may drown and suffer worse injuries than he probably would if he stayed out of the river. Gross negligence manslaughter is to be used where there is no

unlawful act but where a death has arisen because of the high degree of negligence of the defendant.

This is suitable to be used in the situation where Derek is drowning and it is evident to Charles he is drowning but makes no move to try and help him but provokes him by shouting at him whilst he is drowning. Negligence means that the DF has failed to take the care that a reasonable person would have in that situation. In 1994, a case called Adomako established the requirements for gross negligence manslaughter. Lord Mackay decided that the liability for this type of manslaughter will arise when the jury decide:

Having regard to the risk of death involved, the conduct of the DF was so bad in all the circumstances as to amount in their judgement to a criminal act or omission. For the actus reus to be proved, the prosecution need to establish that the DF: \* Owed the victim a duty of care \* The duty was breached causing the death of the death \* That the DF was grossly negligent

The duty that Charles owes to Derek, is when Charles saw that Derek couldn't swim when he was struggling and failing to keep his head above water in the river.

The duty was the fact that Charles caused Derek to jump in to the river to prevent harm caused by Charles - plus the fact that Charles cannot swim is apparent to Charles when he was failing to stay afloat, shows that Charles owes Derek a duty to get some help to save him as he is the only one to witness Derek drowning, so he has a duty to do something to help.

For duty to be completely satisfied, the three stage test from Caparo and Dickman. The three stages are: \* Reasonable foreseeability \* Proximity Is it just fair and reasonable to impose a duty of care? With the case of Derek jumping in to the river, it is reasonably foreseeable that he would jump in to the river to prevent any harm from Charles - as he is anticipating violence from Charles, as the only thing to stop him getting hurt by Charles is jumping in to the river. This make is reasonably foreseeable, as even though he cannot swim, it may have been shallow enough for him to wade across - it is a risk that has to be weighed up.

The duty of care is reasonably foreseeable, as Derek cannot swim, and by jumping in to a river that he has no idea how deep it is means that he is going to need some assistance if he wanted to get out - he wont be safe if he wants to survive. To impose a duty of care the fact that Charles spectates him drowning instit For murder to be satisfied, there must be an unlawful killing of a human being under the queens peace. There has been a killing, with Derek drowning, but to say it was unlawful can be debatable as does jumping in to a river in fear of some one else make that other person a murderer?