

When is negligence a crime: the difference between intent, recklessness and negligence?

Negligence usually belongs in the field of civil law, rather than criminal law.

One reason for this is that most crimes require two elements: the physical act of committing the crime, as well as the mental element of intent.

And negligence is not usually enough to establish a mental element of intent.

There is a good reason for this: being convicted of a crime can have serious consequences, and a person should actually have intended to commit a wrong before they face those penalties.

The judges in one important drug importation case, [He Kaw Teh v R](#), ruled that negligence should not ordinarily be enough to make a person liable for a crime.

For example, if someone has drugs planted on them when travelling, and nothing substantial arouses their suspicion, it would be unfair to convict them of drug importation or exportation just because the drugs are there and it would have been wise to check the bags before travelling.

If, on the other hand, the same traveller suspected that drugs were there but did not check, they could be liable on the basis that they were 'wilfully blind' or reckless, rather than just negligent.

There are however, some exceptions – namely 'strict liability'

and 'absolute liability' offences.

Perhaps the most commonly detected strict liability offences are drink driving and negligent driving.

Negligent driving is often punished by a fine and loss of demerit points, and does not always go through the courts.

If you receive a fine in the mail and a loss of points for negligent driving, you won't get a criminal record.

On the other hand, if you are taken to court for the same offence and found guilty, you may receive a criminal record unless you can convince the magistrate to give you a '[section 10 dismissal](#) or [conditional release order](#)' – which means that you are guilty but no conviction is recorded.

Similarly, you do not have to intend to drive while over the legal limit in order to be found guilty of drink driving – the mere fact that you have a certain blood alcohol concentration is enough.

Another exception is manslaughter– a person will be liable if their negligence causes the death of another person, even if they did not intend to kill or cause grievous bodily harm to that persons.

The reasoning behind this law is that taking a human life is so serious that it makes sense that a higher level care must be exercised.

There must be a high disregard for life and safety of another person in order for a person's negligence to amount to manslaughter.

The difference between negligence and recklessness.

Negligence and recklessness, while often used interchangeably in everyday speech, have different meanings when it comes to the law.

There is no definition of recklessness, but there was a

spectrum with intent at the top end and negligence at the bottom, recklessness would fit somewhere in the middle.

So while it falls short of intent, it implies a more serious level of culpability than mere negligence.

And recklessness is most certainly an important part of criminal law.

Many offences in the NSW [Crimes Act 1900](#) list recklessness as an essential ingredient, including 'recklessly causing grievous bodily harm' and 'reckless wounding'.

Recklessness for those offences requires the defendant to have recognised that their actions could cause result in harm, but went ahead anyway.

And under section 61HA (now superseded by [section 61HE](#)) of the NSW Crimes Act, being reckless about whether a person consents to sexual intercourse or not is enough for someone to be found guilty of sexual assault.

There are many other offences which have recklessness as an element (or may include recklessness as a possible element).

These include:

- Causing a dog to inflict actual or grievous bodily harm
- Injuring a child at time of birth
- Destroying or damaging property
- Obtaining money by deception
- Dealing with an instrument of crime
- Criminal defamation

If you have been charged with a crime that involves an element of negligence or recklessness and need more information, [contact an experienced criminal lawyer](#) who will be able to explain the charge, discuss any available defences and advise you about the best way forward.

