

Criminal law – Assignment 1

by ABC 111

Submission date: 10-Nov-2022 02:56PM (UTC+0700)

Submission ID: 1940327320

File name: Criminal_law_Assignment_1.docx (21.5K)

Word count: 2132

Character count: 11087

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Introduction

English Criminal Law encompasses the various criminal offences, their prevention and their legal consequences. Criminal omission is a concept that defines failure to observe one or more legal duties. The purpose of this discussion is to elaborate on various aspects of criminal omission. It would define the duty to act, and omission, and outline the instances where failure to act might lead to a conviction.

Which part of a crime does failure to act related to?

There are many circumstances where the failure to act is imposed such as the assumption of responsibility. According to the legal term, it is the responsibility of the defendant is for the welfare of the victims which is decisive. The second example is the case of professional responsibility where a professional being might get failed to act professionally such as if a doctor fails to take proper care to treat the patient. In the cases where a person fails to act and has a special relationship with the harm. Or it is implied in a case of dubious extension and restaurant of need. These incidents are enough to trigger the failure to act and the imposition of relevant regulations and laws.

Is there a general duty to act in criminal law?

Criminal laws are generally based on two building blocks, such as ‘actus reus’ and ‘mens rea’. While the former refers to the act of committing a crime, the latter is related to criminal intent. These two are essential for holding an act to be criminal. “Actus reus”, in turn, can be divided into two elements, such as the performance of criminal activities and the “failure to act”. “Failure to Act” is also known as omission and is applicable to certain instances. In English Law, there is, however, no general duty to Act (Sheikh and Subhan, 2017). Failure to Act is only applicable under certain circumstances, for instance, when an individual fails to perform a statutory duty. Other instances when failure to act might lead to the imposition of criminal liability are failure to perform voluntarily assumed duties, failure to perform pre-existing duties stemming from special relationships, and official positions, and failure to prevent harm created by one’s activities (Sheikh and Subhan, 2017).

“**R vs Ruth Ellis (2003)**” is an example of one such case where the failure to observe legal duty led to a conviction. In the mentioned case, the defendant was convicted of manslaughter. The defendant, Ellis, was a geography teacher. Ellis failed to save one of her students from drowning.

The incident led to the death of the student. The court held Ellis guilty of manslaughter as she failed to perform the statutory duties of a teacher.

What are the requirements for a crime to be committed by omission?

Generally, a person is held criminally liable when his actions satisfy both the “Actus Reus” and “Mens Rea”. However, “Actus Reus” is not merely limited to committing a criminal act, rather, the failure to Act might be adequate to hold a person criminally liable. The criteria that need to be fulfilled are described below.

A person might be held criminally liable when he fails to perform a ‘legal or statutory duty’ (Bayliss, 2022). A legal duty might arise from official or professional positions and special relationships, for example, blood relations. For instance, it is the legal duty of parents to provide adequate resources and support to their children and the failure to do so will be declared as a ‘Failure to Act’.

An individual can be held criminally liable if he fails to observe voluntarily undertaken duties. In “**R vs Stone and Dobinson (1977)**”, the defendants were declared criminally liable as they failed to take care of Stone’s sister. Stone’s sister was mentally impaired and her health conditions deteriorated after the couple shouldered her responsibility. Stone and Dobinson were held liable for the death as they had voluntarily undertaken her responsibility but failed to perform their duties.

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Finally, when an individual fails to take adequate actions to mitigate the danger created by their actions, it is declared as a “Failure to Act”. For example, in “**R vs Miller (1983)**”, the defendant set his building on fire after he fell asleep with a lit cigarette. The property was severely damaged and Miller was convicted by the court as he failed to take proper action to neutralise the danger.

When might a statutory duty to act be present?

The statutory obligation can be considered an activity that can be used in many occurrences so that the concerned parties can get proper information. For instance, it is legally required to disclose information related to insurance in the cases of every road accident. The concerned authorities also need to specify the details in the case of selling any goods or properties. Paragraph 100 (6) of the Deregulation Act of 2015 includes the legislative obligations related to this. In addition to that, section 2 of the mentioned act also articulates the relevancy of the acts that contribute to the evolution of the corporate environment.

When might a contractual/ duty based on office be present?

Contractual duty is the activities that include two parties legally responsible for a contract agreement. Similarly, in the case of **R v Pittwood [1902] TLR 37** it occurred that the defendant was employed by the railway authority and the duty of the defendant was to close the gate when the train crossed that particular station. The defendant lifted the gate and let a cart pass and did not close the gate as the individual went for lunch. A train crossed the station but it hit the cart and the driver of the car was dead (E-lawresources, 2022). In this context, the gateman fulfils his individual duty and it is the reason he was responsible for the death of the cart driver.

Hence, this case falls under contractual duty because a contract was prepared between the individual and the railway authority regarding the operation of the railway to operate the gate. Thus, it is stated by the contractual law “if a person is in contract duty to act then non-fulfilment of the desired duty may result under the criminal liability”. In relation to the **R v Miller [1983]** the defendant fell asleep with a lit cigarette and due to this mattress caught fire. However, the defendant, noticing the fire, moved to another room to sleep. It is the reason the defendant was held as an omission because due to the negligence by the defendant the whole building caught fire. Due to this, a massive incident occurred and many people got affected due to negligence.

When might a common law duty to act arise?

A duty of care act is often imposed under a statute or a form of contractual relationship such as the duty of a doctor to care for their patients, the responsibility of an owner to protect those people who are invited to their land, the task of a restaurant to provide a proper fire management system to its patrons or the responsibility of parents to positively safeguard its children or safeguard any thyroid person from their children.

There are instances when the failure to act is engendered as a criminal liability activity as per English Law. For instance, criminal liability is imposed in a case where a defendant fails to protect or keep their duties to protect a person or property. The instances when criminal liability is imposed are the breach of professional responsibility, non-fulfilment of assumed responsibility, creation of “harm due to negligence”, and “non-success to restrain” (Hussain, 2017). A case example can be provided to explain further how criminal liability can be imposed on a person. In the case of “**R v Miller [1983]**”, the defendant was sleeping with a lit cigarette in his hand on his mattress which caused a fire inside the room. Moreover, though the person saw that it caught fire he went on to

sleep in a different room. The court held this act of the defendant was sent as an omission that made the entire building catch fire.

When does a duty to act stop?

“Criminal liability” is also imposed when a person creates a situation of danger and does not address their duties such as taking care of children. In some circumstances, “the statutory duty to act” is used so that detailed information is provided to the parties. For example, the statutory duty is to provide information related to insurance coverage in cases of accidents. It also explains the regulator's responsibilities to that the effectiveness of the relationship can be maintained between the stakeholders and them. The act also helps to control business activities (assets, 2022). “In a case between the Queen and Yaqoob [2005]”, it notified that several individuals are injured along with a dead person because he came between the “tyres of two vehicles taken from the Falcon Taxies that were burst and Iqbal lost his control while driving”. “In the final trial the judge” along with the other jury members “stated that the appellant will not be able to drive for upcoming four years along with a four years imprisonment” due to “negligence of statutory duties”.

Should there be a general duty to act? What are the pros and cons of this?

The duty to act is necessary because a duty to act is a legal duty for an individual to take proper responsibility for their action. Similarly, concerns preventing damage or harm to another person or the general public. In this case, duty has been interpreted by courts to mean responding to calls in a speedy but safe manner and performing a thorough examination of both parties. It similarly includes that the affected persons from the negligence of an individual must be treated or transferred to the appropriate place to get treatment for recovery from the damages. However, the individual is unable to perform the mentioned task or does not respond to the damages caused by the individual negligence (Legislation, 2022).

Then it will be a criminal liability and the individual will be punished under the appropriate law. It is similar to the Miller case as the defendant does not take any responsibility for the damages made. As a result, the defendant moved to another room to sleep and completely neglected the whole scenario leading to a massive fire incident in the building. There are some benefits and drawbacks of this particular duty act. The benefits are it will allow the victim to get justice, and the party that contracted with the individual who caused the damages due to negligence will not suffer by the law. On the other hand, the individual in the contract will have the maximum drawbacks if any incident occurs by any accident. Similarly, the legal contract can be manipulated

by the organisation that contracted the individual for the particular tasks. It will lead to a negative scenario for the individual in the contract.

Conclusion

The above study concludes with a description of criminal law and the liabilities that make an individual fall under criminal activities. Similarly, it highlights the case of Miller [1983] in terms of providing a clear view of the related case to showcase the similarities and consequences of not fulfilling the duty as per the contract.

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