

BMLW4005/BMPL4009

Criminal law – Assignment 1

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Essay Title:

Effectiveness of the Criminal Liability by Omission or the Necessity of an Introduction to the General Duty to Act

Under English criminal law, one cannot be held responsible for inaction unless he or she is under a specific legal obligation to take some kind of action. Humans need more than just a sense of moral obligation to take action. An obligation to take action may originate through the law or through common law (Shute and Simester, 2015). Absence of duty prevents criminal liability for failure to act in the England and Wales. There are some exceptional circumstances set by the judgement of *R vs. Wm Smith* which includes some considerable areas like there must be a legal duty to act and there must be a breach of that duty. Also, the breach must have caused the offence to occur and the defendant must have the requisite *mens rea*. Although the criminal law has historically focused largely on acts of commission that cause injury to another, this essay seeks to critically analyse the status of omissions within the criminal law (Nelkin and Rickless, 2017). An act of omission, defined as anything which is not done in situations when there is some cause or expectation for that item to be done, can be punished, however, under specific conditions. The purpose of this essay is to analyse the conditions under which the judicial system makes such a presumption.

Duty arising from a special relationship: One's obligation of care towards a blood relative is codified in the Common Law. If a parent has a small child, he or she must keep the youngster safe from danger. A mother can be held legally responsible for her child's death if she neglects to feed them. In *Gibbins and Protor (1918)*, a man and his common-law wife were found guilty of murdering the man's baby because they neglected to provide adequate nutrition, which led to the infant's death (Herring, 2014).

Voluntary assumption of a duty of care: One way to think about this obligation is as a broadening of the responsibility of care to cover other people. Reliance is the foundation of this theory, which applies when a defendant knowingly takes on the duty of caring for another person but fails in that duty. In *R vs Stone and Dobinson (1977)*, Stone and his wife Dobinson took in Stone's sisters the Fanneys and made them permanent residents of their home. Fanny's fear of being overweight caused her to starve herself and make herself unwell. Without proper care for her bedsores, she had blood poisoning and passed away (Ambos et al., 2020). Notwithstanding the defendant's knowledge that Fanny was ill, they did not take any action to get her medical help. Both were found guilty of manslaughter.

Although their appeal was denied, the court ruled that the defendants had a legal obligation to either call for assistance or provide for Fanny's needs themselves once she became incapacitated (Molan, 2013). Fanny tragically lost his life because this obligation was unmet. It should be emphasised that Stone would not have been responsible for his sister's death had he not permitted her to stay at his house, since no duty of care would have been required if she had died in her own home or elsewhere.

In another case of *R vs Instan* (1893), the defendant shared her home with her elderly aunt. After contracting gangrene in her leg, the aunt was rendered helpless and unable to manage her own care. Being the sole one who was aware of Aunt's health, defendant neglected to give her anything to eat or take any of her medications. A short time later, the aunt passed away, and the defendant was found guilty of manslaughter (Shute and Simester, 2015). On appeal, Lord Coleridge CJ argued that the inability of English courts to establish responsibility based on the common duty of care given by one party to another would be a fatal flaw in the legal system.

A breach of a contractual duty: Any breach of a defendant's responsibility under a contract might result in civil or criminal liability. While the law of contracts states that a party to a contract has a responsibility exclusively to the other parties, criminal culpability does not follow this rule. A hay waggon crossing the railway tracks was struck by a train in *R vs. Pittwood* (1902) because Defendant, the level crossing gate keeper, neglected to close the gate when the train was coming. Sadly, one man lost his life and another was gravely hurt. Defendant received a manslaughter conviction. Wright J. ruled that although while the contractual responsibility was exclusively due to the railway company, the failure to discharge the duty arising out of the contract might result in criminal culpability (Simester et al., 2019).

Where the accused has created a dangerous situation: To the extent that an accused's actions create a risk of injury to another person or their property, that person or property has a right to expect that the accused would, upon becoming aware of the risk, take reasonable precautions to eliminate or mitigate it. The *R vs. Miller* (1983) judgement by the House of Lords is the most influential case law on this topic (Ambos et al., 2020). The defendant, a squatter in the residence of the petitioner, smoked a cigarette before turning in for the night. The bedspread caught on fire by mistake. The defendant woke up but failed to extinguish the flames. He vacated his own bedroom and moved into the one next door. Unfortunately, a fire broke out in the residence (Loveless, 2016). The defendant's conviction for arson under Criminal Damage Act section 1 was upheld. The *actus reus* of the crime, according to the

House of Lords, is committed when a person who has accidentally started a fire that poses a risk to property becomes aware of what he has done before the harm is complete but still fails to safeguard the property. Same principle was upheld in another case where defendant delivered heroin to her half-sister, who later died of an overdose, as observed in *R vs. Evans* (2009). In another case, for violating Section 1 of the Indecency with Children Act of 1960, Defendant was found guilty in the case of *R vs. Speck* (1977). Defendant was approached by a young lady, about 8 years old, who placed her hand on his penis. After about five minutes of her hand being there, he got an erection. His appeal argued that he did not engage in any gross indecency with or towards a minor (Ambos et al., 2020). For the Court of Appeals, Defendant's omission in not removing the child's hand amounted to an invitation.

Withholding lifesaving treatment: The House of Lords ruled in *Airedale NHS Trust vs. Bland* (1993) that withholding artificial nutrition from a patient in a prolonged vegetative condition who had no likelihood of improving or healing process did not amount to murder by omission. With little chance of recovery left, it was no longer in the doctor's best interest to keep the patient alive by feeding them. Every member of the medical team agreed that Mr. Bland's life support may be turned off and that he could be allowed to die.

The application of so-called Good Samaritan legislation is one solution put up in other jurisdictions to this problem that have been observed, for example in France and Germany. Some of these statutes mandate rescue of an individual in danger, while others require action to forestall criminal activity (Loveless, 2016). Punishment for violating the responsibility to rescue includes jail time or a monetary punishment in both jurisdictions. The German Criminal Code, section 323(c), and the French Penal Code, article 223(6), both make it illegal to refuse to help someone in need if doing so would not put one's own life in danger. It is argued that in this respect, German legislation is more equitable and less burdensome to the general public than its French counterpart. As opposed to French law, German duty to rescue depends on necessity like the need for causation in the tort of negligence, and reasonableness (Ingle, 2016). However, in order to be held responsible for violating the French obligation, it is not necessary to show that the omission actually resulted in injury or that your aid would have been effective. The concept of a responsibility to act in Germany is fascinating as per section 13 of the German Criminal Code. This section does not establish a duty to act, but rather a penalty for those who fail to prevent such a result. This clause achieves the same goal as a broader obligation to act, but with considerably narrower reach (Herring, 2014). Those who may reasonably be held accountable for the actions of would-be offenders are the only ones who are required to take action. The obligation is only broken if the crime is committed,

and if the failure to prevent it is so morally repugnant that it is tantamount to committing the crime itself. Many people feel that it would be too complicated to charge someone for failing to rescue because of all the factors that go into making that choice. A potential rescuer may have only a split second to evaluate whether or not they are equipped to undertake a rescue and whether or not doing so poses any significant risk (Molan, 2013). Courts, if they are to attempt to deal with rescuers, must adopt a subjective standard based on the rescuer's subjective assessment of the rescue's difficulties. It is argued that while the German clause is effective in this case, it is no more so than the common law as it stands right now.

If the legal doctrine of *actus reus* is considered, then no omission may ever be considered criminal. In cases when inaction should be regarded criminal, however, the courts have adopted a pragmatic, albeit cautious, approach (Nelkin and Rickless, 2017). A severe criminal punishment is undoubtedly warranted in some of the aforementioned examples, especially when people have stood by and let members of their own family to die from neglect. The law-makers need to strike a careful balance between this need to do justice and the legal ideals of freedom and autonomy. The law system should not be used to impose morality. Legislative efforts to impose a responsibility to assist others may have good intentions, but in order to be effective, they could not go beyond what is already established by the common law. The German approach has been more pragmatic than the French paternalistic one (Simester et al., 2019). Only the most egregious failures to act should be criminalised, and even then, only where the offender had a clear obligation to intervene because of their own actions, their position in society, or their personal connections to those negatively impacted.

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