

Criminal law – Assignment 1

Liability by Omission

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Introduction

The purpose of the study is to identify the part of the crime which is related to criminal liability. The general duties to avoid criminal liabilities have been explained in the study and the study has discussed the different acts which are required in a crime to specify the omission. The necessity of statutory duty has been evaluated through the study and contractual duties in criminal acts have been elaborated in the study too. The study has addressed common law duties and when the duty of action must be stopped to be performed has been illustrated as well. The concept of the general duty of act in criminal law has been described in the study with its pros and cons.

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

The failure of the act is also known as the omission of an act in criminal cases. In criminal cases, the acts must be performed by the defendant to avoid the crime, but the defendant fails to do so, and therefore, the crime gets successful, which will be identified as the failure of the act in that particular crime. In the case of *R v Miller*, the defendant used to live in a flat where he was squatting and besides that, he was an alcoholic as well (Law Teacher, 2021). One day after a lot of drinking the defendant went back to his apartment and went to sleep with a lit cigarette. For such an act of the defendant, the fire broke away into the room but being informed of that fact also the defendant did not take any steps and went to sleep in another room. That makes the fire burn the whole house and cause £800. In this crime, the defendant has made two failures of the act which has made the damage so heavy. The first one is going

to sleep by lighting up a cigarette. Though the defendant was in an intoxicated condition, it was not a correct step to smoke within a closed room and that action of the defendant makes the fire burn. Next, the defendant did not take any necessary steps or initiate any action to stop the fire having the proper knowledge of the incident though. That is why the fire spread more and a huge loss occurred. If the defendant would take appropriate action to put off the fire, then such a miserable accident will not happen (UpCounsel, 2022).

Is there a general duty to act in criminal law?

There are two general duties which must be present in any act of crime and those are Actus Reus and Mens Rea. The concept of Actus Reus explains the physical actions of no - actions of the accused which have caused harm to the plaintiff. If the plaintiff acts something or fails to act something which becomes physically harmful to the plaintiff, then the accused will be labelled as committing the crime. So, it is the duty of the accused to avoid the Actus Reus to avoid criminal offences. In the case of R v Miller, if the defendant will not light up the cigarette, and if he will take necessary actions to put off the fire, then also the Actus Reus will not be committed and the defendant will not be accused of a crime (CHLARSON, 2022).

Mens Rea is another major principle of criminal acts which explains the mental involvement of the defendant in a crime. In the case of R v Pittwood, the defendant did not leave the gate open with intention and he was not intended to make any sort of offence or to create any difficulties for the rail company (Law Teacher, 2021).

Mens Rea is the intention of the accused for hurting or causing harm to the plaintiff. In this case, the defendant had no intention to kill the horse and that is why it can be said that his Mens Rea was not present in this incident. By performing these two general duties, Actus Reus and Mens Rea a criminal act can be completed and the avoidance of these two approaches make an act differ from crime (CHLARSON, 2022).

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

There are some basic elements which are required to be a crime as an act of omission and those are:

Criminal Act of Actus Reus: Every crime must have an accurate act of crime of Actus Reus. If the accused will not act or will not take part in any act by which the plaintiff has been hurt or harmed either bodily or mentally, the crime will not be committed. Actus Reus is the action of the accused which causes physical or mental damage to the plaintiff and therefore, the presence of this is essential to consider an act as a crime committed by omission. In the case of *R v Pittwood*, if the accused closes the gate for which he was recruited for the job, the horse will not be able to cross the cart and the death will not cause (Law Teacher, 2021). Not closing the gate is the Actus Reus in this case omitting the crime was possible to avoid (Coolidge, 2022).

Criminal Mind of Mens Rea: Every offender must have the intention to do the crime to make it successful. If the offender will not intend to harm the plaintiff and the damage caused to him has been made by mistake or by inattention, then the court will presume that the absence of Mens rea in the crime will become a defence for the offender. Therefore, the presence of Mens Rea is required to be a crime committed by omission. If the Mens Rea or the criminal intent behind the act will be absent, then the crime could be possible to avoid (Coolidge, 2022).

Concurrence: Concurrence is the coexistence of Mens Rea and Actus Reus at the same point in time. If the offender had the intention to harm the plaintiff before the commission of the crime, not at the time of the action, then the act will not be considered a proper crime and that is why both these approaches must be at the same point of time (Coolidge, 2022).

Causation: Causation is mandatory to be an act to be a crime as it proves that the harm or loss which has been caused to the plaintiff is the result of the action of the accused. If the ultimate result will not be the reaction to the action of the defendant, then, the act of crime will not be established against him (Coolidge, 2022).

When might a statutory duty to act be present?

Statutory duties are those duties or acts which have been imposed on the statutory bodies by any act of parliament. In criminal cases, local police are an important statutory body and they have certain clauses to act statutorily.

The police will perform their statutory duties only when a crime is reported to the police station. To involve the police in a criminal act, at first the plaintiff must be contacted and must tell them all the incidents in detail. On hearing the details of the

cases, the police team will make a self-judgment, not on the matter of who is the accused as they have to find him out but, on the way, the investigation should be directed and what acts and sections will cover the crime that has happened to the sufferer (nidirect, 2021). After collecting the information, the investigations will start and the police might arrest people on their suspicion and conduct proper identification of them by the sufferer to confirm that they were the offender or not. If the arrested individuals are innocent then they will be released by the police department. But if not they will be presented to the court and a fair trial will be conducted based on the investigation and evidence provided by the police authority (commons library.parliament.UK, 2022).

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

The contractual duties must be performed by the people with whom the contract is made and also by them as well who are related to the effect of the contract.

Contractual duties are important for healthcare professionals. In the case of R v pittwood, the duty of the gatekeeper was contractual as he was appointed for this action only (Law Teacher, 2021). As the gatekeeper has failed to shut the gate and the horse died for such non-action for him, he will not be accused of the death of the animal but also of breaching the contract as well. In the healthcare profession, when a patient gets admitted to a hospital, maintaining the safety of the patient is the contractual duty of the healthcare authority. When the patient is admitted into the hospital, an implied contract is made between the parties that the patient will be protected by the clinic security authority.

When might a common law duty to act arise?

The common law duty of action arises when criminal cases get judged by the court of the United Kingdom. The judges of the UK will apply a common law to decide the criminal liability of the defendant in a case. In the case of R v pittwood, the common law has applied to decide if the defendant is guilty or not and the results come that as the defendant was in a contractual job to close the gate, the breach of the contract of that job is the fault of the defendant for which he is liable for the crime (the student lawyer, 2020).

When does a duty to act stop?

The duty of act stopped when the attempt to duty might cause harm to the defendant himself. If the defendant might get hurt or any harm or damage caused to him to perform the duty of the act, then he must stop the attempt (the student lawyer, 2020).

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

The general duty of the act should be there as it helps to prevent many crimes.

There are some pros of it like it helps to reduce crime rate and make the amount of damage less. On the other hand, it might pose a risk to the life of the defendant as well. As in the case of R v Miller, if the defendant would have succeeded to stop the fire by performing the general duty of the act the damage of £800 would not have been caused. On the other hand, the attempt of putting off the fire might cause danger to his own life (Law Teacher, 2021).

Conclusion

The study has provided a guide for criminal liabilities in different cases. The acts and duties of the defendant which bound him by different criminal objectives have been described in the study also.

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