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In this essay I'm going to discuss about and explain when criminal liability will be upheld for failing to act. I'm going to start by giving an insight into what criminal liability is.

So, three of the elements in criminal liability is Actus Reus which is a Latin term which means Guilty Act and as it states in the book Herring. (2020). Criminal law (Ninth edition.). Oxford University Press the definition of actus reus is the "the conduct element of the offence. actus reus describes what the defendant must be proved to have done or in some cases failed to do in what circumstances and with what consequences in order to be guilty of a crime" so basically it means that for you to establish actus reus, a lawyer must prove that the accused party was responsible for the crime that person committed but for this to happen you also need to investigate another element.

Another element is Mens Rea which is also a Latin term but means guilty mind and states in the book Herring. (2020). Criminal law (Ninth edition.). Oxford University Press that the definition for mens rea is "the mental element of the offence this may be for example the intention, recklessness or negligence" so In order to be guilty, the criminal must have committed the act in a culpable mental state. So, while the criminal element actus reus is an essential element in deciding whether a crime occurred, a person may be judged not guilty of if mens rea is absent, so to be found guilty you need both elements for the process to be finalised.

Another element is for criminal liability is omission this means by failing to act by duty to act or a breach of duty and where a breach caused the harm to the victim and a very good example of this is from the book Herring. (2020). Criminal law (Ninth edition.). Oxford University Press "generally a person will not be liable for simply failing to act but criminal lawyers often point out that if a person comes across a child drowning in a pond and simply walks by leaving the child to die, there is no criminal liability but if the child was a family member, then you would be liable because you have a duty of care to act if it's a family member".

I'm going to tell you about this case that happened between 2000 and 2001 The case of R v Wacker is one of them cases of migrant smuggling that happened in the United Kingdom that changed the way migrant trafficking is now dealt with in the UK but not only because of the significant loss of life. Several sources suggest that the events and the prosecution in this case had a significant impact on the migrant smuggling trade from China and the United Kingdom resulting in the number of Chinese immigrants now entering the United Kingdom have halved. This was based on google (July 2022). Available at: <https://vlex.co.uk/vid/r-v-wacker-perry-792829713> (accessed November 2022).

R v Wacker who was a Dutch and the driver of a lorry carrying sixty Chinese illegal immigrants from Rotterdam to England. The lorry had a concealed compartment in which the immigrants were placed. Once inside they were sealed in. The lorry was a refrigerated lorry which meant that there was no ventilation. There was one air vent. The immigrants were told that if the vent was shut, they must be silent to avoid detection. R v Wacker shut the vent ten minutes before boarding the ferry and didn't open or reopen it, so the lorry was on the ferry for ten hours resulting in fifty-eight deaths of suffocation. This was based on google (August 2013). Available at: (https://sherloc.unodc.org/cld/case-law-doc/migrantsmugglingcrimetype/gbr/2002/r_v_wacker_2003_qb_1207.html). (Accessed November 2022).

The part above was the part in the case where R v Wacker failed to act by omission because as soon as he loaded the sixty migrants on to the lorry he is performing and guilty of actus reus (guilty act) guilty acts being the transporting of migrants in the back of a lorry to shutting the air vent which wasn't done intentionally meant to kill them, but this is a perfect example of an actus reus and mens rea because he knew he was guilty by illegally transporting them but didn't set out to kill them. The mens rea (guilty mind) element in this is also because he has planned and knew what he was doing by giving the Chinese migrants orders on what to do for example telling them they must be silent to avoid detection and even though what he was doing was wrong he still had a duty of care to look after and keep the migrant safe, but this massively failed resulting in death of fifty eight of the sixty. R v Wacker was convicted and sentenced to fourteen years for gross negligence manslaughter for each of the deaths. This was based on google (July 2022). Available at: <https://vlex.co.uk/vid/r-v-wacker-perry-792829713> (accessed November 2022).

R v Wacker also broke contractual duties because by driving a heavy goods vehicle (HGV) carrying passengers when he was meant to be delivering goods and carrying out legal Contractual duties which states you will include the services that are due to be carried out by one party. This can be anything; so long as it is within the scope of the law also Some duties include ensuring the vehicle which would have been void because the loads was civilians and not products. This was based on google (2018). Available at: <https://hs-legal.co.uk/services/individual-services/civil-litigation/contractual-obligation/> (accessed November 2022).

As stated in the book Ormerod, Laird, K., Smith, J. C. ., Ormerod, D. C., Smith, J. C. (John C., & Ormerod, D. C. (David C. . (2021). Smith, Hogan, and Ormerod's criminal law (Sixteenth edition). Oxford University Press, A legal duty is an obligation, created by law or contract. A legal duty requires a person to conform their actions to a particular standard. And it also carries with it a recognition that the law will enforce this duty to the benefit of other individuals to whom this duty is owed.

As the duty to act states that it takes one or more persons to take responsibility and take precautions to prevent any harm to the public and people around them, so in this situation R v Wacker had a massive duty of care in which he failed because he had a duty of care to look after the sixty passengers even though they are getting transported illegally he still had the responsibility to keep them safe which he didn't causing multiple deaths so in this situation the duty of care would have stopped as soon as the passengers reached their destination unhurt and safe, for example if one of the passengers broke a bone in their body and went to the hospital a week later R v Wacker would still have the duty of care because the injury happened on his watch. Based on google (2021). Available at: <https://simplestudying.com/duty-to-act/>. (Accessed November 2022).

There are many pros and cons to having a duty of care it is also a legal and profession requirement I'm going to use an example from health and social care which involves carers nurses and doctors and give the pros and cons of the example. As it states on a google (2021). Available at: <https://www.highspeedtraining.co.uk/hub/duty-of-care-in-health-and-social-care/>. (Accessed November 2022). "You are a manager in a care home, and you have two new members of staff part of their job role they need to be able to use hoists to help move individuals. You undertake a risk assessment and discover that they have not had training in this area for several years. You have a duty of care to ensure they are trained in using hoists safely before you allow them to use them. Failing to do so may cause harm to your staff and residents, resulting in a breach in your duty of care".

So, the pros of this are that you are making sure that the people using the hoist are trained and competent because if you didn't have to make sure they were trained and competent then you wouldn't know if they could use it safely which could cause serious harm to someone. Also, another pro to this example is that they also have a duty of care to make sure that the hoist is safe to use and has been tested and the proper checks are done prior to use because not doing this could also cause serious harm and could lead to the hoist getting used if not fit for purpose. As it states on a google (2021). Available at: <https://www.highspeedtraining.co.uk/hub/duty-of-care-in-health-and-social-care/>. (Accessed November 2022).

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