

Omissions – Actus Reus

1. Explain what is an omission in criminal law (10).

2. Read Omission as Actus Reus (pages 112 to 116), research the Cases and Acts. Please use law websites if the cases are not mentioned in the chapter.

Introduction

The general rule is that there is no liability for omissions (failing to act) unless statute or common law states there is a duty to act.

Both France and the Netherlands have a ‘Good Samaritan’ law so a person is responsible for helping others including strangers in an emergency situation. This rule generally does not apply to the UK but there are exceptions.

It must be noted that the defendant is charged with a substantive offence which is capable of being committed by an omission e.g. murder, gross negligence manslaughter, criminal damage and battery. Some crimes cannot be committed by omission such as unlawful dangerous act manslaughter and assault.

NB Consider the relationship between a duty to act and a duty of care.

Statutory duty to act –Set out the duty to act in the following Acts: The majority of criminal offences that require a duty to act are known as strict liability offences (see later)

a) s.6 The Road Traffic Act 1988 **Failing to provide a specimen of breath**

b) s.170 The Road Traffic Act 1988 **Failing to stop or report a road traffic accident**

c) s.1 Children and Young Persons Act 1933 **Parents who are legally responsible for a child under a duty to provide food, clothing, medical aid and lodging and if they don't, they can be liable for wilful neglect**

Common Law duty to act. Give brief facts for each case

(another way of saying judicial precedent)

a) Certain categories of people are under a positive **contractual duty to act.**

Pittwood 1902 Appellant was an anaesthetist. In charge of a patient during an eye operation and during this, the patients' oxygen pipe became disconnected and the patient died. Appellant failed to notice or respond to the obvious signs of disconnection. Jury convicted him of gross negligence and manslaughter

R v Adomako 1994 Railway cross keeper was omitted to shut gates, with the result that a young boy who sneaked through a gap in the fence and crossed the line was struck and killed by a train. The keeper was guilty of manslaughter

b) Public office can create a positive duty to act.

R v Dytham 1979 A police officer was on duty and saw a man being thrown out of a nightclub about 30 yards from where he was standing. Following this there was a fight where the victim was kicked to death. The police took no steps to intervene or summon help. He told a bystander he was going off duty and left the scene. He was convicted as he was guilty of negligence to perform his duty

c) Special relationship between the parties

R v Gibbins and Proctor 1918 Father of a 7-year-old girl lived with a partner. The father had several children from an earlier marriage. He and the partner kept the girl separate from his other children and deliberately starved her to

death. Both were convicted of murder. The father had a duty to feed her as that he is the parent and the partner was convicted because she had undertaken to look after the girl

d) Voluntarily accepting responsibility for another.

R v Stone and Dobinson 1977 Ted Stone, 67, blind, partially deaf, had no appreciable sense of smell and had low intelligence lived with Gwendolyn who was 43 and was described as ineffectual and inadequate. Ted's sister Fanny came to live with them. She had mental problems and suffered anorexia. Ted and Gwendolyn agreed to look after Fanny however Fanny's condition deteriorated and she was found dead in appalling conditions. Ted and Gwendolyn were both found liable for her death as they failed to look after Fanny and ensured that she got the medical help she needed

e) Creating a dangerous situation.

R v Miller 1983 D was out drinking and he went back home and fell asleep with a lighted cigarette. When he woke up he saw a small fire had started and he got up and went into another room to sleep in. He was liable as he failed to put the fire out or call the fire brigade

DPP v Santana-Bermudez 2003 Police searched D who claimed he didn't have any more needles in possession. Police searched him and was stabbed by a needle in D's pocket. He was charged and found guilty of battery

R v Evans The appellant, her mother and Carly all had a history of heroin addiction. Carly had just been released on licence from a detention and treatment order and a condition of the licence was that she resided at her mother's house. The appellant moved in with her mother after her boyfriend was sent to prison. The appellant bought some heroin and gave it to Carly. Carly self-injected the heroin and then developed symptoms which the appellant, from her own experience, recognised as an overdose. The appellant and her mother decided not to seek medical assistance for fear of getting into trouble. Carly died. The appellant was convicted of gross negligence manslaughter along with her mother in relation to the death of her 17-year-old sister, Carly.

In **R v Evans (2009)** The judges commented that liability could have also been created under d above but decided that the appropriate principle was in e.

Duty of Doctors

Airedale NHS Trust v Bland 1993 Tony Bland was caught in Hillsborough crush which reduced him to a vegetative state and he'd been like this for 3 years and was kept alive on life support. He had no hope for recovery so with parents' consent, applied for a declaration that it might be lawfully discontinue all life sustaining treatment and medical support measures designed to keep him alive in that state. Withdrawal of treatment would be considered an omission. However, in this case there was no duty to act as it was not in the best interest of Mr Bland to continue to provide treatment.

Continuing Acts and Omissions

Fagan v MPC 1969 Fagan was told by police to park by a kerb, doing so, he drove onto the policeman's foot without realising and when the police shouted for him to move, he refused. He was convicted of assaulting police in the execution of his duty.