

# Aspects of criminal law



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Contents Introduction I work as a legal advisor at Eastern solicitors, on behalf of the Head Solicitor I am going to create a detailed report for our new client Mr. Mitchell. I am going to be Informing him about the elements and various cases that need to be considered to assess a crime along with a thorough explanation of corporate liability.

When proving that the defendant is guilty, there are two elements of law which are Actus Reus and Mens Rea. Actus Reus (a/r) Actus Reus is the physical element of a crime which is basically what the defendant has done and not done.

Actus Reus can be: Voluntary act A failure to act A state of affairs An act (Voluntary Act) The act must be voluntary part of the defendant. For the defendant to execute the a/ r they must have physically acted upon the crime.

If the defendant has no control his actions then he has not technically committed the a/r. Case: Leister v Pearson (1952) for full case study, See appendices 1. The defendant did not voluntarily commit the crime as he no control over his actions. Because of this, the defendant was acquitted after they established that he had no control of what occurred.

The voluntary act is when the defendant was pushed by the car behind him which undistributed to him physically committing the crime. Mr. Mitchell you need to understand how the voluntary act operates as it is vital that you understand your legal rights as a defendant if anything happens. In your case, if anyone physically does something and harm is caused then alarm

has been committed. This applies to cases where the defendant has been condemned of alarm even though they did not act voluntarily.

State of affairs reviews circumstances, which is looking at the chain of events. Case: Winner (1983) for full case study see appendices 2.

The fact that the defendant was placed on the highway he had committed state of affairs although he didn't act voluntarily. Because of the state he was in, the defendant involuntarily committed a crime.

State of affairs is when the defendant being drunk was placed on the highway by the police which made him commit the crime as he something and it is recognized as a crime, there can be convicted regardless of how they got to that point. You need to understand that to be convicted for state of affairs, it doesn't have to be the defendant who placed himself in that situation.

A failure to act (also known as omission) Generally, the rule is that there can be no liability for failing to act, unless at the time when the defendant failed to act they were under legal duty to take positive action. There are exceptions to the rule that an omission cannot make a person guilty of an offence.

In some cases it is possible for a failure to act to be the a/r. Typically the omission will only amount to the alarm if there was originally a 'duty to act'. Duty to act is referring to the notion where, the defendant is under a duty, which is perceived by law to act in the circumstances.

There are five different situations where there is a legal duty: A contractual duty A duty because of a relationship (usually a parent or child) A duty that has been awakened on voluntarily A duty through one's official position A duty

which arises because the defendant has set in motion a chain of events. A contractual duty Contractual duty is what a person is meant to do through having a signed contract. The contract clearly states all the duties you have to partake within that role.

Case: Fatwood (1902) for full case study see appendices 3.

The contractual duty is for Fatwood to control the railway gate. The defendant failed to shut the gates, which led to a person being killed means he failed to do his contractual duty as a railway Rossini keeper. Case: Domain (1994) for full case study see appendices 4. The contractual duty was for the anesthetist was to make sure the victim was breathing properly after the operation. The defendant failed to do their contractual duty as they failed to notice the vital piece of the breathing tube being disconnected.

Mr. Mitchell, with your employee contracts, you have to make sure that they all fulfill their contractual duties. Failure to act within their contractual duty may lead to them causing harm. A duty because of a relationship (usually a parent or child) This is the duty given to the parent to look after their child ensuring that they don't suffer any unreasonable detriment to health and safety. Case: R-v-Gibbons and Proctor (1918) for full case study see appendices 5.

The parental duty was for the father of the child to make sure that his child was not neglected and left to starve which caused her death.

The defendant failed to do their parental duty as results of the negligence caused the victim's death. Mr. Mitchell, as a parent you need to make sure

you fulfill the parental duty you have towards your children. To avoid failing to act within your parental duty, you need to make sure all your children are catered for and not neglected in any way. A duty that has been taken on voluntarily This is when someone voluntarily assumes responsibility for another person then they also assume the positive duty to act for the general welfare of that person and maybe liable for omissions which prove fatal.

Case: Stone & Dobson (1977) for full case study see appendices 6. The voluntary duty was for the victim's brother to take care of her since she had a condition that had to be monitored. The defendant's feeble efforts to try and get help for her amounted to their attempt to reduce liability. This is the legal and civic duty, a person in a public office may be under a public duty to care for others.

Case: Dunham (1979) for full case study see appendices 7. The professional duty was for the defendant to take civic duty after he witness the violent attack.

The fact that his shift had finished he didn't have professional duty, but at the same time he had to fulfill he's civic duty. As a civilian, Mr.

Mitchell you should also consider your civic duty and take action when it's required under the civic duty. Taking action limits the chances of you being in charged on failure to act under the civic duty. A duty which arises because the defendant has set in motion a chain of events This is when the defendant accidentally commits an act that causes harm, and the subsequently

becomes aware of the danger he has created, there arises a duty to act reasonably to avert that danger.

Case: Miller (1983) for full case study see appendices 8.

The duty was when the defendant failed to act at different occasions which contributed more damage. Because of the different events that took place, the defendant could have done something, but because they failed to act during the chain of events they failed to act within their duty. Case: EDP & Santa – Bermuda 2003) for full case study see appendices 9. The duty was when the defendant failed to act during the chain of events.

The fact that the defendant said no to having needles in he's pocket and allowed to continue searching and didn't inform the victim, he failed to act during the chain of events which ended up causing harm.

Mr. Mitchell, if you are in a situation that allows you to act to avoid more damage than the already existing, you should always act and help stop the damage than contributing to the damage. Failure to act during a chain of events may leave you getting charged and possibly found guilty. Causation If a criminal crime is to be proved, then it must be shown that the conduct of the defendant caused the consequence.

There must be a clear and unbroken link between conduct and consequence. Where a consequence must be proved, then the prosecution has to show the following: The defendant's conduct was the factual cause of that consequence The defendant's conduct was in Law the cause of that consequence There was no 'intervening act' which broke the chain of

causation. In order to validate a conviction the legal team which includes the police, solicitors, barristers and the courts will have to prove all of the three points to suggest a valid invention. Factual cause This concerns the defendants actual actions.

We have to assess whether the consequence of the crime would have happened ‘but for’ the defendants actual actions. That ‘but for’ the conduct of the accused the victim would have died at the same time regardless of the defendants act in *White (1910)* for full case study see appendices 10. The defendant gave his mother poison but, before it had a chance to take effect, she died of a heart attack, which was not caused by the poison. He was not liable for her death. Case: *Pageant (1983)* for full case study see appendices 11.

But for the defendant using his pregnant girlfriend as a shield she shouldn’t have been shot.

Mr. Mitchell, when using the ‘but for’ test you need to take into consideration if you didn’t do what you did would the outcome would have happened. This will help assess whether your actions caused the consequence. Legal cause up our factual link.

Legal causation can be proven in one of two ways: where the thin skull test applies and where the original jury was an operative and significant cause of the crime. The defendant must contribute to the consequence. The contribution must be ‘more than minimal, but it does not have to be substantial’.

It may also be the case that other people or things may have had a part to play in the event, but the defendant may still be solely liable. Case: R-v-Smith (1959) for full case study see appendices 12. Because there was an intervening act, this moved the blame from one person to another as the victim was dropped twice and received inadequate medical which caused more harm as the victim died.

Mr. Mitchell you need to understand that when more harm is created after there was harm already, that is adding to the harm that was already there, which is known as an intervening act and might be seen as a age contribution to the end cause.

Thin skull Rule: this is used to prove legal causation as well as minimal substantial. The rule is 'the defendant must take the victim as they find them'. This means that if the victim has something unusual about his physical or mental state which makes an injury more serious, then the defendant is liable for the more serious injury.

Case: Blade (1975) for full case study see appendices 13. The fact that she was a Jehovah Witness made the wound more fatal, but the defendant was still guilty because he had to take his victim as he found ere.

Her refusal of the transfusion was unreasonable and broke the 'chain of causation'. There must be a direct link between defendants conduct and the consequences; this is known as the 'chain of events'. It is very important to understand this as it is the concept that could potentially move liability from the original defendant to another party.



The incident has to be sufficiently separate from the defendant's actions.

The incident has to be serious enough that it would break the chain of causation, the chain that was originally linking the original defendant to the victim. The incident is called an 'intervening act'.

The chain of causation can be broken by the following: An act of a third party - someone extra to the original incident The victims own act A natural but unpredictable event - earthquake Intervening act An intervening act which is a natural result will not break the chain of legal causation. In order to break the chain of causation so that the defendant is no longer responsible for the consequence, the intervening act must both: Sufficiently independent of the defendant's conduct Sufficiently serious enough A valid intervening act can be used to blame another person. Case: Jordan (1956) for full case study see appendices 14.

The intervening act is when the first doctor gave the victim an antibiotic of which he suffered an allergic reaction after the stabbing. But the second doctor contributed more damage as the victim died after he gave him the antibiotic that caused the reaction at first. Case: Roberts (1971) for full case study see appendices 15. The intervening act is when the victim escaped the car where she was experiencing unwanted sexual advances. Case: Mr.

Mitchell, if someone manages to contribute to the damage that was already there ND causes more damage than the one that was there before that is seen as an *Mens rea* (m/r) is the mental element of a crime.

The required *Mens rea* varies depending on the offence, but there are two main states of mind which separately or together can constitute the

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necessary m/r of a criminal offence: intention and recklessness. The courts have to consider the extenuating circumstances of the defendant as well as the guilty act to assess Judgment. Defenses such as: A medical condition/ or medication which lowers the ability to concentrate Fatigue - which may increase forgetfulness Stress Old age MS

The courts should consider these elements so they can be fair to everyone and also assess their intention; if there is something wrong with the victim they may be excluded. Now we are going to discuss the three types of m/r which are intention, subjective recklessness and gross negligence.

Intention it is a subjective concept: a court is concerned purely with what the particular defendant was intending at the time of the offence and not what the reasonable person would have intended in the same circumstances.

The basic rule of intention is: ' the defendant must have clearly had this outcome in mind and not committed he offence by accident or carelessness. It must have been their unmistakable goal'. Case: Moan (1975) for full case study see appendices 16. Intention is when the defendant accelerated hard when he was 10 yards away from the officer which could have knocked the victim down.

Case: Yam-v-EDP (1974) for full case study see appendices 17. Intention was when the defendant placed the burning newspaper planning that damage will be caused.

Mr. Mitchell you need to understand that intention is assessed depending on what could have happened after you have done something that may be likely to cause harm.

There are two different definitions of intention which are Moan and Yam. Moan's definition is the intention to plan as in the case study he had planned to increase his speed 10 yards away from the police officer. Yam's definition is that the defendant planned and did the act which is seen as foreseeing and carrying out the act. You need to understand both of the definitions of intentions as you will be able to understand what the defendants would have done.

There are two different categories of intention which are called 'direct' and 'oblique'. When a person desires the result of their actions this is known as direct intent.

For example a person traces the movement of their victims, plans when to attack them and carries out an attack that results in the consequence they planned; this would be regarded as direct intent. When a person carries out an attack and produces another consequence that they did not intend, but they knew it was likely to occur, this is known as oblique intent.

For example if an attacker plans to murder someone by exploding a bomb under the victim's car as a result destroys nearby houses, then the oblique intent is the demolition of the houses. As they did not intend the houses to become damaged but knew it was likely to occur.

The defendant would have understood the foresight of their consequence. Subjective Recklessness It is a lower level of mens rea than intention. The

basic rule of s/r is: the taking of an unjustifiable risk. You use s/r if you can't find intention as the mens rea; if the defendant to convict him of something.

Generally the whole idea of s/r is to assess if the defendant realized the risk and decided to take it anyway. Case: R-v- Cunningham (1957) for full case study see appendices 18. SIR happened the defendant left a ruptured pipe which with leaking gas that led to the victim inhaling the gas and cause she was injured. Mr. Mitchell, you need to understand the s/r as it is vital for you to know what you can be charged with if you end up in a situation where there is s/r. Gross Negligence It concerns failure to use even the slightest amount of care in a way that shows recklessness or willful disregard for the safety of others.

This is the lowest level of m/r but it still involves a very serious element of negligence. Case: Domain (1994) for full case study see appendices 19. Gross negligence is when the anesthetist failed to notice the breathing tube being disconnected. Mr. Mitchell you need to make sure all your employees are catered for and also monitor what they do because failure to do this may lead to gross negligence as any harm can be caused.

Strict Liability Some offences do not require m/r or do not require m/r to attach to an element of the a/r. These are generally as strict liability.

Strict liability offences exist in 2 forms which are statutory law and Common law. Statutory laws are written in the statutes e.

Common Law Acts of Parliament – Trade Description Act 1968. Common law are laws that have been understood by people and they are easy to change. They are not written anywhere, people just understand them. List of all the s/l offences Case: Harrow London Borough Council-v-Shah (1999) for full case study see appendices 20. The statutory law offence was Shah being the owner of the shop didn't manage what the employees were doing.

Because he has the overriding responsibility he was charged.

Mr. Mitchell as the manager of your company, you always need to monitor what your employees are doing because at the end of the day you have the overriding duty so anything that happens within your company, you will be charged for it if not monitored. The types of offences that are covered by the rules of s/l are often ones that relate to- Public health or safety such as food quality – The Trade Description Act 1968 Health and Safety at Work Act 1974 The conditions of cars that you drive Speeding offences Parking violations.

The Road Traffic Act 1991 covers all the above.

These are all examples of strict liability offences that are written into statutes and are absolute offences. If there is no need for m/r the offence is called a strict liability offence but also known as a 'absolute liability offence. Corporate Liability Criminal offences may not be only be committed by individual people, but also by companies. A corporation can only be held liable for an offence which may be punished by a fine. Types of business:- Sole trader – all legal liability falls with the trader.

Partnerships – legal liability falls with each partner. Partnerships do not have a its own legal identity which is separate to the owners of the business The most senior member of the company has the m/r. alarm can be done by any if the employees. Case: Tests Supermarket Ltd-v-Mantraps (1971) for full case study see appendices 21. The defendant committed a statutory strict liability offence as they were giving an indication that goods are on sale at a lower Princeton that at which they are in fact on sale.