

Liability for liams death law equity essay

Law



Margaret Agbonson Liability for Liam's Death Law LLB- Level C: Seminar Group A Level C Seminar Group A Student- i7232804 Word count: 1819

In this essay I will be discussing any criminal liabilities for Liam's death that Bugsy who supplied Liam with the drugs that killed him and Steve who took Liam in to look after him. Actus Reus is the physical act of a crime, it's the voluntary act, and the actus Reus is everything else but the mental state of the mind of the defendant. Actus reus consists of an omission, state of affairs, conduct crime and result crime. an omission can be the actus reus of a crime, omission is when you can be liable for failing to act, there is no general liability in criminal law for omission for example, if a child was drowning in a deep lake, and someone was walking past as the child drowned they don't have to save the child unless they have a duty to do so, if the child was to die this person walking past can not be held as a liability for the child's death. Omission can be applied to Liam's case, in which his brother Steve, which means that he had a relationship duty of care to look after Liam and to keep him from harm. In common law a person can only be held liable for omission if they have a duty to act, they must do what is necessary in circumstance, a person can be held liable if they have a contractual duty to act and they fail to meet this contractual duty they can be held liable. In the case of Pittwood [1902] 19 TLR 37 Taunton Assizes[1], the defendant was employed by a railway company to look after the gate at a level crossing, the defendant opened the gate, in order for a cart to pass by, the defendant then went to get lunch but failed to close the gate, in failing to do so a train hit a horse and cart, this incident killed the train driver, the defendant was held liable for the death of train driver as he had a contractual duty to close the gate but failed to meet those contractual duty, which resulted in the death of

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a man, the defendant was convicted of manslaughter. A person who assumes duty of someone who is unable to look after themselves, the defendant owes a duty of care to him/her to protect the person from harm and look after them. A duty of care can arise under a statute, for example, Section 6 Road Traffic Act 1988, it states that ' A person commits an offence if without reasonable excuse he fails to co-operate with a preliminary test in pursuance of a requirement imposed under this section.' If the defendant fails to give a breathalyser they have committed an omission. Another legal duty that can be liable of conviction is if the defendant creates the dangerous situation, the defendant may be under a duty to avert that danger, and may be a criminal liability for failing to do so, this can be seen in the case of R v Miller[1983] 1 All ER 978, HL, in this case he defendant fell asleep on his mattress, he had fell asleep with his cigarette, he woke up to find his mattress was on fire, and he simply got up and walked away to a different room without seeking assistance or putting the fire out, he was convicted for arson but not for starting the fire on the mattress but failing to act, the defendant had created a situation and failed to stop the dangerous situation he had created. Duties are also created by public office. If a person has a relationship with another they have a relationship duty, for example mother and child etc. In the case of Liam, as I have previously stated, his brother is Steve, who took Liam into his home after Liam had lost his home and family as a result of drug addiction and was living on the street, as Liam is Steve's brother he owes him a duty of care, Steve took Liam into his home with the intention to help him overcome his drug addiction, but after a short time he started to suffer from withdrawal symptoms, Steve then overheard Liam talking to someone on the phone, within an hour Bugsy appeared at the

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house and Steve suspected he was a drug dealer but still allowed him in in home- Steve should have acted upon his suspicion, because if he knew that Liam was a drug addiction and was suffering from withdrawal symptoms, he would likely try to get some drugs, Steve then saw Bugsy run out of the house shouting ' you'd better see to him, Steve ran upstairs to find Liam unconscious, Steve was embarrassed and worried about the consequences if he'd called the ambulance, Steve failed to call an ambulance but instead covered Liam with a blanket to make sure he was alright, when Steve woke up in the morning Liam was dead, because Steve failed to call an ambulance he failed to carry out his duty as his brother, he could see his brother was unconscious and saw the risk but decided to ignore all the warning signs, Steve failure to act has resulted to an omission: which is enough to make the defendant a criminal liability, because Steve failed to act upon his duty as he has a relationship duty with Liam, this omission then resulted in the death of Liam, it is a factual causation, in order for factual causation to be applied we must be able to do the ' but for' test; but for Steve to have called an ambulance then perhaps Liam could have been revived by doctors and still be alive, but for Steve to have made the decision not to call an ambulance while Liam was unconscious caused his death. Factual causation can be seen in the case of R v Cato [1976] 1 All ER 260, in this case farmer the victim in this case had a bag of drugs and decided to invite others to join in injecting the drugs, which were Cato, Dudley and Morris, they paired up and injected each other with the drugs Cato and Farmer paired up together, the other pair left to go to bed after a while but cat and farmer continued to inject themselves throughout the night, the defendant was charged with manslaughter and appealed against it, but the appeal was denied and the <https://assignbuster.com/liability-for-liams-death-law-equity-essay/>

conviction of manslaughter was upheld. Mens rea could also be considered in Steve's case, because we know what he was thinking which was that he was embarrassed and worried, in criminal law a person can not be punished for an act alone without questioning the state of mind, mens rea is concerned with the state of mind of the defendant, In mens rea there are two categories intention which is when you know the outcome of your actions and recklessness which is concerns with the result that the defendant knows will happen and objective recklessness which the defendant is unaware of the outcome but if the defendant had given it thought like a reasonable man would then they would have recognised the risks. In this can be seen in the case of R v Caldwell [1981] 1 All ER 961. In this case, the defendant set fire to a hotel whilst under the influence of alcohol, the hotel had guests sleeping at the same time, the fire was discovered and put out before it could cause any harm to anyone, the defendant was convicted of criminal damage under s. 1(2) Criminal Damage Act 1971, the defendant claimed that because of his drunkenness, he did not realise his action would put the people inside the hotel in danger, Lord Diplock said in response: in my opinion, a person charge with an offence under section 1(1) of the criminal damage act 1971 is 'reckless as to whether any such property would be destroyed or damaged' if (1) he does an act which in fact creates an obvious risk that property will be destroys (2) when he does the act the either hasn't given any thought to the possibility any or such risk', this is statement from Lord Diplock is stating that that the defendant is liable whether he had thought about the risks or not. Steve has incurred the criminal liability of involuntary manslaughter because he does not have the mens rea of murder, there are two categories in involuntary manslaughter and that is gross negligence manslaughter and <https://assignbuster.com/liability-for-liams-death-law-equity-essay/>

constructive manslaughter. Constructive manslaughter is an unlawful act that results in death but not all unlawful acts can result in being convicted of manslaughter, the unlawful act must also be dangerous this can be seen in the case of R v Church [1965] 2 All ER 72, whereas with constructive manslaughter attempts to demonstrate how an unlawful act as been committed, gross negligence is based around how a lawful act can be deemed criminal, gross negligence manslaughter was first laid out in the case of R v Bateman (1925) 19 Cr App R 335, in this case Lord Hewart LCJ gave guidelines as to which to evaluate whether someone is liable for gross negligence manslaughter, these are ; did the defendant have a duty of care to the victim, was that duty of care then breach and did the breach of duty cause the death. In order for the defendant to be charge with gross negligence manslaughter, the three guidelines must be proved first and there must also be a mens rea. Steve falls into the three categories, he had a duty of care as Liam was his brother, Steve also breached his duty of care by not calling an ambulance while he was unconscious and this failure to act caused Liam's death and Steve also has the mens rea, as it states in the case that Steve was embarrassed and worried of the consequences so didn't call an ambulance, Steve is criminally liable for involuntary manslaughter-gross negligence manslaughter. Bugsy is criminally liable for contrastive manslaughter, constructive manslaughter can be broken down into three categories; has the defendant committed an unlawful act, Bugsy prepared the drugs and gave to Liam knowing the risks, the act was dangerous and it caused Liam's death. Although Bugsy handed the drugs to Liam and he voluntary administered it himself, which therefore breaks the chain of causation, in order for a person to be criminally liable there must be no

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novus actus interveniens, which is a new act that intervenes breaking the chain of causation, but Bugsy handing Liam the drug the drugs broke the chain of causation as it as voluntary. In conclusion, Bugsy is not criminally liable for the death of Liam and Steven is criminally liable for gross negligence manslaughter.