

Essential Element of a Crime

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1.1. Rules of causation and the egg shell skull rule:

Causation refers towards the enquiry where the decision is made whether the conduct of the defendant is caused with the damage or harm. Causation takes place in all of the resulting crimes (Martín-Casals, 2019). In the field of criminal liability, it is being divided into the legal causation and factual causation. As for factual causation that is the starting point and it includes the implication of the **but for** test. In the cases where there aren't any complicating factors, the factual causation is present on its own will and it further established the causation (Summers, 2018). As for the legal causation, in some cases it becomes necessary to look into this causation. Under this causation, result is often caused by culpable act where there is no requirement and the main act of the defendant is the only cause. Further there are not any novus actus interveniens that are linked with defendant or that the defendant needs to take down on his victim in case he finds him (Bansal, 2020).

Factual causation:

The **but for** test works on one statement. The statement is to analyse, but for the actions that are done by defendant, would the event have occurred? If the answer of the statement is yes then defendant is not liable but if answer is no then defendant is liable. In the case of Alphonso, it can be observed that if Alphonso would not have tried to punch Francine then none of the casualties would have occurred and the death of Vidal would not have taken place (Lahav, 2022).

The action of the third party is referred to as the novus actus interveniens. These actions, until and unless are foreseeable such as negligence that is faced by a member of the third party. This novus actus interveniens law refer towards breaking the chain of causation in case the defendant has acted negligently, then a intervening action is responsible that breaks the chain of causation

with damage or loss of any sustained individual then defendant is not liable (Rizzi and Thomasson, 2022). Once thing that occurred apart from the actions of Alphonso was when Vidal trips up the kerb opening and his earlier wounds opened further causing more flow of the blood. If Vidal would have trip from kerb and faced major injuries then the defendant would not be responsible for the causes, but the injuries were first made by the defendant and then they got worse due to the fall. This shows that the injuries of the fall might not have worsened if there were no injuries in the first place that were given by Alphonso.

Eggshell Skull Rule:

The eggshell skull rule is effective in all of the intentional tort cases and the negligence law. As for the eggshell skull rule, it protects the rights of the people who have any kind of pre-existing condition that make them having more chances towards any kind of injury as compared to any other person (Alam, 2019). As for the lawsuits that are filed by the injury lawyers, the law explains that there is legal doctrine that explains that the liability of the defendant will not be reduced only because of the fact that the injured plaintiff is more susceptible towards injury as compared to the average plaintiff (Law; Walsh v Swapp). In this case there are chances that Vidal might be more susceptible towards the injuries and due to that injury, he lost his control and trip over the kerb to face more injuries. According to this law, it shows that Alphonso is criminally liable towards Vidal's death and all the injuries that he faced.

2.1. Principle of Omission:

Omission is referred to as the failure to act that attracts all the legal consequences from the positive conduct. In the field of the criminal law, omission constitutes of the actus reus where it give rise towards the liability when the law imposes the duty to act and when defendant breach

the duty (Xu, 2020). The general rule of omission explains that there is not any kind of liability if a person fails to act in any of the circumstances. For example, if an individual see any child drowning in any shallow water and they do not do anything to save the child then there will not be any criminal liability towards their negligence regardless of how easy it will be for them to save a life (Hanich, 2018).

Statutory duty:

The statutory duty is related to any kind of duty that is being imposed under the written law for the specific time being that is in force within the territory. The statutory further include that it is an obligation to act that worked under the conditions where an individual fails to act (omission) and the results in the criminal liability. The section 170 of the traffic road act of 1998 states that, any person or any individual who comply with the subsection of 2 or 3 is above guilty of any offence towards a person who have the reasonable grounds for doing something (Divine, 2020), who have acquired to produce it and the driver need to report the accident to the authorities in case a person face any kind of harm or is injured. This law is only for the vehicles and all the drivers that are present in the public roads (Agar and Ward, 2018). The section 6 of the road traffic act 1988 is also linked with the driver and the duty that they offer. According to this law, it is their duty to stop, report the accident or the crime and then give the information or any kind of documents that they might have related to the incident.

Contractual duties:

The contractual law in the criminal law is the duty that is not only for the people party who are part of contract but is also for the people who have chances to get injured in case the contract is not well performed. For example in the case of the R v Pittwood (1902), the defendant lifted the

gate where he allowed a cart to pass and then he went to get his lunch (Hasitha and Jain, 2019). During this time the train and a horse cart collided that resulted in the death of the train driver. Defendant was found to be liable for the driver's death because it was his duty to present in the contract to open and close the gate (Henne, et al, 2019).

Assumption of responsibility:

There are two main features that are present in the assumption of responsibility. The first is that the representee need to be reasonably relying on the representation and the representor should reasonably foresee his actions (Coca-Vila, 2018). This assumption of responsibility explain that if any individual create any dangerous situation then they are liable for the harm that has occurred if they have not taken any reasonable steps to prevent the harm. It can be seen in this case that Vidal's trip also occurred due to the kerb on the pavement. According to the law, the height of the kerb cannot be more than 1 cm. In case the kerb has the height that is above 1 cm (Stahn, 2019), and any passerby trips down over the kerb having injuries, then they have the claim that they can make for the injuries they faced.

Creates dangerous situation:

This includes all those clear circumstances in which individual is found to be liable for omitting the act where they create some kind of dangerous situation and put other people at risk (Skolnik, 2020). As for the individual, if they do have the idea that they have created the risk, then they are under the obligation to prevent harm from happening (Drinóczi and Bień-Kacała, 2020).

As for Susan, she is not liable for her actions that she did with Vidal. Susan saw Vidal lying on the floor and was suffering from pain but as she was late for work therefore she did not stop and walk past him to her office. These are the actions that Susan is not liable for until and unless she

caused the incident, or if she would have seen the incident from the vehicle and the accident would be on the road accident. In this case there are no liabilities for Susan.

3.1. Principle of Mens rea:

Mens rea refer towards the criminal intent. It is focused on the state of mind that is statutorily needed to convict the defendant in any kind of the particular crime. Before the crime is made liable to any criminal, it is important that it should be first proved to look at the blameworthy mental condition. The first is direct in which the defendant has underlying conscious object on which they act (Saffary, Kousha and Saberi, 2019). The second is oblique where the defendant is certain that conduct will cause any particular result. The third is acting recklessly in which the defendant consciously disregards all the unjustified risks. The last is acting negligently where the defendant is not only aware of the risk when they should have been aware about the risk. In the case of R v Cunningham (1957), it shows that the appellant was removing the gas meter so that he can steal money from the inside. The meter was in connection with neighboring house in which the appellant's mother in law was living. She was sleeping in her apartment and the removal of the gas meter caused gas leakage into her property (Rostamighazani, 2021). This led to poisoning the mother in law with gas and the defendant was charged for endangering the future mother in law's life. According to the Offences Against The Person Act, (1861) the appellant fall into the category of recklessness in the mens era and had to be liable for poisoning her mother in law. In the mens era, there is transferred intent that is also referred to as the transferred malice. This is a legal doctrine that is placed when the intention is to harm one individual inadvertently and it causes harm to the second person, even then the perpetrator is held accountable (Yaffe, 2018).

The transfer of the malice shows and confirms the fact that Alphonso is responsible for hitting Vidal, even though when he was trying to hit someone else. Further the actions and pain caused by Vidal was also because of Alphonso. Lastly, there was mens era as the intention of Alphonso was not to hurt Vidal, but he will still be held accountable for his actions.

References:

- Agar, J. and Ward, J. eds., 2018. *Histories of technology, the Environment and Modern Britain*. UCL Press.
- Alam, A.A., 2019. Causation in the Law of Crimes. *LexForti Legal J.*, 1, p.9.
- Bansal, D.J., 2020. *Causation in criminal law* (Doctoral dissertation, University of Birmingham).
- Coca-Vila, I., 2018. Self-driving cars in dilemmatic situations: An approach based on the theory of justification in criminal law. *Criminal Law and Philosophy*, 12(1), pp.59-82.
- Divine, J.M., 2020. Statutory Federalism and Criminal Law. *Virginia Law Review*, 106(1), pp.127-198.
- Drinóczi, T. and Bień-Kacała, A., 2020. COVID-19 in Hungary and Poland: extraordinary situation and illiberal constitutionalism. *The Theory and Practice of Legislation*, 8(1-2), pp.171-192.
- Hanich, J., 2018. Omission, suggestion, completion: Film and the imagination of the spectator. *Screening the Past*, 43.
- Hasitha, S. and Jain, A., 2019. Actus reus and mens rea.
- Henne, P., Bello, P., Khemlani, S. and De Brigard, F., 2019. Norms and the meaning of omissive enabling conditions.
- Lahav, A.D., 2022. Chancy Causation in Tort Law. *Journal of Tort Law*.
- Law, U., Walsh v. Swapp Law PLLC Appellant's Reply Brief Dckt. 46885.

- Martín-Casals, M., 2019, February. Causation and scope of liability in the Internet of Things (IoT). In *Liability for Artificial Intelligence and the Internet of Things* (pp. 201-228). Nomos Verlagsgesellschaft mbH & Co. KG.
- Rizzi, M. and Thomasson, A., 2022. Inferring Necessary Conditions: The Enduring Paradox of the 'But For' Test in Factual Causation. *UWA Law Review*.
- Rostamighazani, O., 2021. The Mens Rea of the Crime of Smuggling of Goods and Currency. *Jurisprudence and Islamic Law*, 12(22), pp.93-116.
- Saffary, A., Kousha, J. and Saberi, R., 2019. The Challenges of Absolute Application of the Principle of coincidence of mens rea and actus reus. *Criminal law and Criminology Studies*, 48(2), pp.357-377.
- Skolnik, T., 2020. Criminal law during (and after) COVID-19. *Man. LJ*, 43, p.145.
- Stahn, C., 2019. *A critical introduction to international criminal law*. Cambridge University Press.
- Summers, A., 2018. Common-sense causation in the law. *Oxford Journal of Legal Studies*, 38(4), pp.793-821.
- Xu, D., 2020. On the Conflict between Crime of Omission and Principle of Legality.
- Yaffe, G., 2018. The point of mens Rea: The case of willful ignorance. *Criminal Law and Philosophy*, 12(1), pp.19-44.