



Principles of Criminal Liability [1]

# Actus Reus & Omissions

**By the end of this unit, you will be able to (AO1):**

- Understand what is meant by actus reus,
- Describe the different ways actus reus can be formed in the law.
- Describe what is meant by an omission and when it may attract criminal liability.

**You should also be able to critically explore (AO2):**

- The moral basis for the development of liability for omissions.
- The current scope of liability for omissions.

Homework:

**13C**

1. Apply the law to conclude on D’s liability.
2. Write up your response to the A2 assessed essay we plan in class.

**13E**

1. Write up your response to the A2 assessed essay we plan in class.
2. Complete homework sheet one [HS1].

How will you be assessed?

You will write up your response to the following question, which we will plan as a group in class time.

*In general the criminal law prohibits the doing of harm, but does not impose criminal liability for an omission. However, there are justifiable exceptions to this general principle.*

Assess the truth of this statement by reference to situations where a failure to act may result in criminal liability [50]

Key terms:

Term	Means	Term	Means
Conduct offence		Neighbour Principle	
Consequence offence		Voluntary assumption	
State of Affairs offence		Specific relationship	
Dangerous situation		Public duty	
Mitgate harm		Contractual duty	

Introduction:

# What do we do at A2?

**Criminal Law G153**

- 60% of A2 Law
- 3 questions in two hours
- One essay question
- One problem question
- One application question

**Know the Rules**

1. Be here
2. Be equipped
3. Be in correct attire
4. Put your phone away
5. Meet deadlines
6. Try your best.
7. No homework by email.

**Criminal Law G154**

- 40% of A2 Law
- Synoptic
- Source Booklet
- 3 questions, no choice
- One essay
- One case analysis
- Three short problems

## General Rules on Criminal Liability

Crimes tend to be **fault** based and require both a voluntary \_\_\_\_\_ (guilty act) and an \_\_\_\_\_, (guilty mind)

**Task:** Look at the following statements, which element(s) do they refer to?

1. "I'm going to steal a car"
2. "A punch in the face causing a black eye"
3. "I just shot a man and I'm glad"

**And one more key rule...**

Woolmington v DPP [1935]

**Facts:**

**Ratio:**

This case establishes that D is **innocent until proven guilty**

... and that it is for the prosecution to prove **beyond a reasonable doubt** the elements of any crime charged against D and to disprove beyond a reasonable doubt any defence save insanity that D may raise at his trial.

**Important Teacher Point:**

One of the first things you need to get used to at A2 is the fact that whilst there are rules in the law, virtually none of them is absolute! So get used to using the words 'but' 'although' and 'however'.



# Actus Reus

The *Actus Reus* tends to be the physical element of the crime and generally speaking should be a **positive, voluntary act**.

## What does this mean?

Well, if someone picks up your hand and uses it to slap someone else, then you have committed a **positive** act, but it was not **voluntary** and you therefore would not be liable.

Case example:

## Leicester v Pearson (1952)

### Facts:

D, who was driving the car, did not stop for pedestrian on zebra crossing and hit V.



### Ratio:

1. **Why** was this an involuntary action?
  
  
  
  
  
  
  
  
  
  
2. What effect did this have on D's liability?

**However**, as you will quickly see this is not a hard and fast rule. For example there are some situations where the **failure** to act may be sufficient for an *actus reus*... or the act does not even need to be voluntary!

## Student Task: Applying the Law

**All** of you should be able to decide whether or not there has been a voluntary actus reus

**Most** of you should be able to support this with reference to support case

**Some** of you may be able to determine whether D also has a 'guilty mind' or mens rea.

D is at the doctors, having his reflexes tested. His leg kicks out, causing the doctor to suffer a black eye

D is angry at V, and argues with him. Losing his temper he punches him, breaking his nose.

D is dancing around, and clips V with her elbow, sending her over a small balcony, causing a broken leg.

D1 spikes D2's lemonade, hoping he will stay and talk to her. D2 doesn't realise and drives his car home whilst intoxicated.

## Types of Actus Reus

There are various ways that the AR element of an offence may be fulfilled:

### A Consequence or Result Crime

This probably covers the majority of crimes, and describes the situation where the illegal act is the **outcome** of D's action.

Murder - \_\_\_\_\_

Wounding - \_\_\_\_\_

### State of Affairs

Remember the phrase "wrong place, wrong time"? This means that D simply finds themselves in a set of circumstances... and it's these circumstances which are enough for the AR. All the prosecution must prove is that the circumstances exist!

Case Example:

#### Winzar v Chief Constable of Kent (1983)

##### Facts:

##### Law:

D's Conviction was upheld. The QBD held that the importance was that D was there on the highway drunk, rather than the involuntary behaviour.

#### Larsonnuer 1933

##### Facts:

D was forcibly repatriated from Ireland to the UK and was charged under the Aliens Act 1920

##### Law:

### Conduct

For these offences the *actus reus* is simply the **prohibited** conduct in doing the action – in other words how you are doing the offence is the important thing.

**Theft** is one example. One of the AR elements is the "**appropriation** of property belonging to another". The taking of the property is enough.

**Perjury** is another example, where D is guilty if they lied under oath in court. It doesn't matter whether the lie was actually taken into account in the case... or what the lie was actually about!

### Omissions

This is where a failure to act is enough for liability. They are limited and an exception, but it is possible!

#### Gibbons & Proctor

##### Facts:

DD starved a 7 year old girl to death, and were charged with her murder.

##### Law:

# Omissions:

## Our first real area of law

**Student Task:** Ok, so you know the basics, but can you determine the scope of D's liability (this means when they will and will not be responsible for their failures legally)

Situation	ALL Duty or not?	Most Why?	Some Why might this impose criminal liability for this failure?
D invites his sister to come and stay with him. Whilst she is there, she refuses to eat any food and dies of malnutrition			
D walks home from his job as a lifeguard. As he walks past the local river, he sees a child in there struggling. He walks past.			
DD's daughter had diabetes. As a result of their beliefs, they refused to let doctors treat her with insulin and she died.			
D is searched by a police officer who asks him if he has anything in his pockets. D replies no, but has a needle which stabs the officer.			
D walks home from his job as a lifeguard. As he walks, he sees a child in the local river struggling. He jumps in to save V, but in the resuscitation accidentally breaks one of her ribs, resulting in V's death.			

## What's the actual law on this area?

**Definition:** An omission is a **failure** to do something where a duty of care is owed. They come largely from the common law which means that they are created by \_\_\_\_\_

### General rule\*:

\*and the crime must be capable of being committed by omission! E.g. assault cannot be committed by omission (*Fagan v MPC*)

### Illustration of the general rule:

**Airedale NHS v Bland (1996)**



**LAW:**

# When do I owe a legal duty to act?

Well, the honest truth is that we owe a duty when the courts tell us we do, and the case of *R v Khan & Khan* confirms that they can add to these at any time! **However** in determining when a duty exists, the courts tend to use the following case:

## Donoghue v Stevenson 1932

Facts:



**Obiter:**

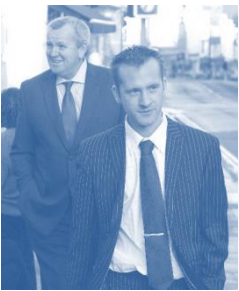
In determining whether or not D owes a duty, the neighbour principle should be used to work out the scope.

**Who then is my neighbour?**

It is the person(s) so directly affected by your actions that you ought to have foreseen that your failure could harm them.

The following case confirms that breaching the 'neighbour' principle may be sufficient to impose criminal liability:

## R v Winter 2010



Facts:

Ratio:

The courts have developed a number of duty situations when you may owe a legal duty of care, and so be liable if they fail to fulfil that duty.

**Summary:** Why do we impose a duty of care on some people, and so find them liable if they fail to carry out that duty properly?

**E Grade:**

Clearly explain why the duty exists

**C Grade:**

Support your explanation with a well explained case.

**A Grade:**

Consider the limitations you think should be imposed on this area.

# The current duty situations:

Below are the areas which are currently recognised as imposing D with a duty, and so imposing them with liability if they fail to fulfil that duty. You need to be able to describe the areas, and then consider whether the imposition of that duty is fair to both D and V

## 1. Duty arising from Specific Relationships.

This really only covers two situations:

- 1.
- 2.



### R v Gibbons & Proctor (1918)

**Facts:**

**Ratio:**  
Ds were responsible for her, had failed to feed the child and their conviction for murder was upheld by Court of Appeal.

Although this was established by the courts, it has also been confirmed by statute in s.1 Child and Young Persons Act 1933

### R v Harris & Harris (1993)

**Facts:**  
DD were the parents of a young girl with diabetes. They had refused to allow the doctors to treat her diabetes with insulin. She died as the result of a diabetic episode.

**Ratio:**


## 2. Duty Arising from Contractual Obligations

This is where D is under a contractual duty to act (normally because of their job) and if they fail to do so, they may be liable if lives of others are likely to be endangered as a result.

### R v Pittwood 1902

**FACTS:**  
D operated a gate at a level crossing which he left open. A cart crossed the level crossing and was struck by a train, killing the driver.

**Ratio:**



### R v Adomako 1993

**FACTS:**

**Ratio:**

### 3. Duty Arising from a Public Office.

This is where the duty arises because D has special training due to his 'public office' and so we expect more of them.

#### R v Dytham (1979)

**FACTS:**

**LAW:**

He was guilty of **misconduct in office** because he did not protect V or apprehend the attackers.

Guilty of wilfully and without reasonable excuse neglecting to perform his duty.

#### What other job(s) might this cover?

### 4. Voluntary Assumption of Duty.

If you voluntarily accept responsibility for another, you may be imposed with a duty to act with regard to that person's welfare. This is the vaguest one, as it can be unclear as to when a duty starts...

#### R v Stone & Dobinson (1977)

**FACTS:**

Ds were common-law wife & husband of low intelligence. S's sister, Fanny, came to live with them. She was an anorexic, and would stay in her bedroom. She eventually became ill, confined to bed and died of malnutrition and blood poisoning. Neither D had sought medical help.

**LAW:**

#### R v Instan (1893)

**FACTS:**

**LAW:**

**Important AO2:**

"It would not be correct to say that every moral obligation involves a legal duty; but every legal duty is founded on a moral obligation."

### 5. Duty Arising from Dangerous Prior Conduct

If D has created a dangerous situation which creates a risk to another's life or property, then they are under a duty to stop or limit the results of the action. If they don't, then they may be liable for the results of their action.



## R v Miller (1983)



**Facts:**

**Ratio:**

## R v Santana-Bermudez (2003)

**Facts:**

**Ratio:**

D's failure to tell the policewoman of the needle was enough to convict. He knew the danger and failed to take steps to avert it.

Conviction upheld.

## A new duty...

### R v Evans (Gemma) 2009



During this course you will be asked to read a number of short or edited law reports. This is because the majority of criminal law comes from the court, and we have to understand not only what the law is, but why that was the decision of the court.

Read the enclosed law report and answer the following questions:

1. What happened?
2. What is the main problem with omissions?
3. What was the outcome of the appeal?
4. Which duty could **not** be used to convict D and why?
5. Name one case which was followed by the CA in this decision
6. What was the duty, which was developed by the CA here?
7. Do you agree that D was "under a plain and obvious duty"? Why?

**Challenge:** why did Carly's mother not appeal her conviction for manslaughter?

## Duty to mitigate harm done and save life

Court of Appeal, Criminal Division  
Published April 7, 2009  
**Regina v Evans (Gemma)**

...

THE LORD CHIEF JUSTICE, giving the judgment of the court, said that the appellant, together with her mother, was convicted of manslaughter by gross negligence following the death of her half-sister, Carly, aged 16, who had self-injected with heroin supplied by the appellant.

When Carly had developed and complained of symptoms consistent with a heroin overdose the appellant and her mother had decided not to seek medical assistance because they feared that they themselves and possibly Carly would get into trouble.

Instead, they put Carly to bed, hoping that she would recover spontaneously. The following morning Carly was dead. The cause of death was heroin poisoning.

It was not in dispute that the appellant had remained at the premises from the time when Carly injected herself, throughout the evening and night; that she had witnessed obvious signs of the effect of the drug taken by Carly and that she appreciated that her condition was very serious and indicative of an overdose; and that the appellant and her mother believed that they were responsible for the care of Carly after she had taken heroin.

The problem of fixing liability, whether in tort or in crime, on the basis of omission had generated much, indeed prolonged debate.

The question was whether, notwithstanding that their relationship lacked the features of familial duty or responsibility which marked her mother's relationship with Carly, the appellant was under a duty to take reasonable steps for the safety of Carly once she appreciated that the heroin she had procured for her was having a potentially fatal impact on her health.

When omission or failure to act were in issue, two aspects of manslaughter were engaged. The first was manslaughter arising from the defendant's gross negligence: *R v Adomako* ([1995] 1 AC 171).

The second arose when the defendant had created a dangerous situation and when, notwithstanding his appreciation of the consequent risks, he failed to take any reasonable preventive steps: *R v Miller* ([1983] 2 AC 161).

None of the relevant authorities involved what could sensibly be described as manslaughter by mere omission and in each it was an essential requirement of any potential basis for conviction that the defendant should have failed to act when he was under a duty to do so.

The duty necessary to found gross negligence manslaughter was plainly not confined to cases of a familial or professional relationship between the defendant and the deceased.

In their Lordships' judgment, consistently with *Adomako* and the link between civil and criminal liability for negligence, for the purposes of gross negligence manslaughter, when a person had created or contributed to the creation of a state of affairs which he knew, or ought reasonably to have known had become life-threatening, a consequent duty on him to act by taking reasonable steps to save the other's life would normally arise.

... On the facts, the appellant was under a plain and obvious duty to take reasonable steps to assist or provide assistance for Carly. The remaining ingredients of the offence were proved. The appeal would be dismissed.

## Statutory Duties to Act

As well as the courts, Parliament has created a **few** other specific statutory situations

- s.170 Road Traffic Act 1988 states that it is an offence for a driver involved in a road traffic accident to **fail to report** an accident to the police.
- S.6 Road Traffic Act 1988 states that it is an offence to fail to provide a specimen of breath when asked by a police man to do so.

### Justification:

- S.1 Child and Young Persons Act 1933 states that a parent or guardian can be prosecuted for failure to look after their child.

### Justification:

### Important information to know:

The government has created what is more commonly known as "familial homicide" under s.5 of Domestic Violence, Crime and Victims Act 2004.

### R v Mujuru 2006

This was the first conviction under this new offence. Read the article and answer the three questions.

1. What is the offence created under this act?
2. **Why** was the mother convicted? What was her 'omission'?
3. What is the purpose of the new legislation?
4. Do you agree with the new law?

### Woman let boyfriend kill her baby

**A woman whose boyfriend killed her baby is facing a 14-year jail sentence after being convicted of family homicide.**



Sandra Mujuru was at work when her baby was killed

Sandra Mujuru, 21, who had denied causing or allowing the death of her daughter Ayesha, is thought to be the first person convicted under new laws.

The legislation aims to stop parents who keep silent or blame each other for fatal injuries from walking free.

Her live-in partner Jerry Stephens, 37, of New Malden, south London, was found guilty of murder and jailed for life.

He was also found guilty of causing four-month-old Ayesha grievous bodily harm with intent and child cruelty and must serve a minimum of 20 years.

This was the same piece of legislation which convicted Baby P's mother and some of the defendants in the recent controversial Blue Lagoon (Michael Gilbert) case in Luton - <http://www.guardian.co.uk/uk/2010/apr/26/family-jailed-blue-lagoon-murder-michael-gilbert>

## Student Tasks

At A2 Law, **half** your marks come from the ability to apply the law to a situation and conclude on what that means for a defendant.

### What to do:

Read the following situations and complete the table to shown if there is a duty to act in each situation. Explain your answers using relevant cases, and then conclude on what that means for D's liability.

Situation	Is there a duty to act?	Explanation <i>Using an explained case to support your conclusions</i>	Conclusion on liability
<p>Jack &amp; Sophie are having a picnic on a farm. Jack lights a fire near a haystack. The haystack catches fire, burning down the barn next to it. Jack and Sophie run off and do nothing to prevent the spread of the fire.</p>			
<p>Mitch is a lifeguard at a swimming pool. While on duty, a child drowns. Mitch didn't realise what was happening because he was chatting to one of his friends.</p>			
<p>Mark starts to look after his elderly aunt. She is frail and needs to be helped with her feeding. After 3 weeks, Mark gets a new girlfriend. He forgets to take food to his aunt and she dies of starvation.</p>			
<p>Susie, a teacher, is taking a group of students on a canoeing trip to enable them to bond. She makes sure that the instructor is qualified, but doesn't make the students wear a life vest. One of the students, Sam, falls out the canoe and drowns.</p>			

# Reforms and Evaluation (AO2)

## What does this mean?

Simply put, you need to identify the good and the bad things, using cases to illustrate them, and understand how potential changes might affect it. These are useful for essays, as they point out problems with the law, and how to we could make the law better.

Area	What does this mean?	Critically Evaluate
How do you 'give up' or 'end' a duty (can you?)		
<b>R v Smith:</b> D the husband of a woman who gave birth to a stillborn child at home, delivered by her husband. D wanted to get medical attention for her but she would not allow this. Three days later when she became unconscious, D called the doctor, who did not arrive until after she died. The medical evidence was such that if a doctor had been summoned earlier the woman might not have died. <b>Ratio:</b>		
<b>Airedale NHS v Bland:</b> <b>Ratio:</b>		
When is a duty imposed upon you?		
Should we impose higher standards of good practice on certain people? Are they justified?		
Is it easy to distinguish between an act and an omission?		
Not all offences can be committed by omission.		

**Reform: Should we have a more general duty of care?**

England & Wales does not have a 'Good Samaritan' law, unlike other countries, like France and the Netherlands. When Diana died in the crash, and the photographers stood around taking photos, the French threatened to prosecute them under this law.



What is a good Samaritan law?

**What are the pros and cons of a 'Good Samaritan' Law?**

Pros	Cons

**Developing your criticism...**

As part of preparing you for your first formal assessment at A2, you need to develop your critical writing powers. Each of you has been given one critical comment on the area. Using the snowball help and your own understanding, complete a critical paragraph below, or in your notebooks (if you want a little more room!)

**My critical quote:** \_\_\_\_\_  
\_\_\_\_\_

**My critical response:**