

CHAPTER 4: ACTUS REUS

Actus reus (criminal act or omission) and mens rea (criminal intent) usually go hand-in-hand when discussing criminal responsibility. The text gives each of these its own chapter; actus reus is discussed in Chapter 4, while mens rea is discussed in Chapter 5.

ACTUS REUS Voluntary vs. Involuntary Acts

The text illustrates the Model Penal Code's definition of voluntary and involuntary acts and Ohio's definition relies heavily on this example. Section 2901.21 (A) (1) of the Ohio Revised Code provides the "requirements for criminal liability:"

The person's liability is based on conduct that includes either a voluntary act,
or an omission to perform an act or duty that the person is capable of performing.

Note that the statute provides that an omission can also be subject to criminal liability. But another part makes it clear that voluntary intoxication is not an excuse for failing to act:

Voluntary intoxication does not relieve a person of a duty to act if failure to act constitutes a criminal offense. Evidence that a person was voluntarily intoxicated may be admissible to show whether or not the person was physically capable of performing the act with which the person is charged (Ohio Revised Code, § 2901.21 (C), 2000, available at <http://codes.ohio.gov/orc/2901.21>).

Note too, that while voluntary intoxication cannot be used to excuse inaction, in some instances it can be a way for a defendant to show that he or she did not commit a crime. For example, in *State v. French*, 171 Ohio St. 501 (1961), the defendant was charged with rape, but he claimed that he was so drunk that he could not physically commit a sexual act. The Ohio Supreme Court ruled that although a defendant has the right to try to prove this in court, he or she bears a heavy burden of proving that defense by a preponderance of evidence. The voluntary intoxication provision in the criminal liability statute also contains a clause discussing intoxication and intent that will be addressed later in the chapter on mens rea.

The criminal liability statute also contains a section dealing with involuntary acts. As stated in the text, a person is held liable for voluntary acts-- the products of conscious choice. The Model Penal Code lists the behaviors that are considered involuntary for the purposes of liability. The Ohio Revised Code mirrors the Model Penal Code:

Reflexes, convulsions, body movements during unconsciousness or sleep, and body movements that are not otherwise a product of the actor's volition, are involuntary acts (Ohio Revised Code, § 2901.21 (D) (2), available at <http://codes.ohio.gov/orc/2901.21>).

An Ohio case helps illustrate the relationship between involuntary acts and liability. It is actually a civil case, but the court used a similar standard. This case is *Roman v. Estate of Gobbo*, 99 Ohio St. 3d 260 (2003)

Roman v. Estate of Gobbo

The driver of a vehicle suffered an apparent heart attack while on the road. The car he was driving collided with two other vehicles. The driver who suffered from the heart attack and a passenger in his car

died, as well as two others in the cars that were hit. Two others suffered injuries. The families of the deceased individuals in the other cars and those who suffered injuries filed a lawsuit against the estate of the driver, claiming that the driver negligently caused death and injury to others. The lawsuit claimed that the driver had a history of heart and other health-related problems and should have foreseen that this could possibly cause him to suffer a heart attack while driving; thus, he should not have been driving.

The Ohio Supreme Court was asked to rule on the continued viability of Ohio's "sudden medical emergency defense" or "blackout doctrine" which had been articulated in a previous case, *Leyman v. Haynam*, 164 Ohio St. 3d 595 (1956). The defense provides that :

...an operator of a motor vehicle who, while driving, becomes suddenly stricken by a fainting spell or loses consciousness from an unforeseen cause, and is unable to control the vehicle, is not chargeable with negligence or gross negligence. Stated differently, fainting or momentary loss of consciousness while driving is a complete defense to an action based on negligence if such loss of consciousness was not foreseeable.

An important aspect of this case was whether or not the driver's heart attack was foreseeable. The families of those who died or were injured claimed that the driver's heart attack was foreseeable because he had a history of heart problems. On the other hand, a number of doctors testified that, although the driver had health problems, the problems were not severe enough to restrict driving. None of the doctors indicated that they would have told the driver to stop driving. As a result, the Ohio Supreme Court ruled in favor of the driver, claiming that this case was a textbook example of the sudden medical emergency defense. Notably, because the driver could not be considered culpable for his involuntary actions, the other injured motorists were unable to sue the driver's insurance company to recover for their injuries.

In addition to this case and others, the Ohio Jury Instructions manual offers a definition of the "blackout doctrine" that is utilized in both criminal and civil cases:

...where a person commits an act while unconscious as in a (coma) (blackout) (convulsion) due to (heart failure) (disease) (sleep) (injury), such act is not a criminal defense even though it would be a crime if such act were the product of a person's (will) (volition) (Ohio Jury Instructions Committee, 1989).

Acts of Omission

As mentioned above, the criminal liability statute makes it clear that liability can be based on voluntary acts, or acts of omission. Thus, the criminal law can punish individuals who have a legal duty to act, but fail to do so.

Ohio imposes a duty to act on some individuals, including doctors, others who provide emergency care, and caretakers of children. An interesting case from Ohio illustrates the possible charges that a parent can face when he or she neglects a child in their care. This case comes from Ohio's Ninth District Court of Appeals and is called *State v. Davis*, 2004 Ohio App. LEXIS 2915.

State v. Davis

In this case, a mother was convicted of felonious assault and failure to provide for her son, who was functionally impaired. The mother was convicted of felonious assault and neglect of a functionally impaired person because the neglect of her son resulted in serious harm to her son. The felonious assault statute provides that: "No person shall knowingly...cause serious physical harm to another or to another's unborn" (Ohio Revised Code, §2903.11 (A)(1), 2000), while the statute governing neglect of a

functionally impaired person provides that::

No caretaker shall knowingly fail to provide a functionally impaired person under the caretaker's care with any treatment, care, goods, or service that is necessary to maintain the health or safety of the functionally impaired person when this failure results in serious physical harm to the functionally impaired person (Ohio Revised Code, §2903.16 (A), 1996, available at <http://codes.ohio.gov/orc/2903.16>).

The defendant argued that she should not have been convicted of both counts, because the crimes were the same. The offenses of felonious assault and neglect of a functionally impaired person applied to the exact same conduct – causing serious harm to the defendant's son. The Ohio Supreme Court disagreed, stating that each crime required proof of different elements. The court ruled,

Undoubtedly, both statutes include a knowingly element and a serious physical harm element. However, felonious assault requires one to knowingly cause serious physical harm while failure to provide for a functionally impaired individual requires knowingly failing to provide alone. Failure to provide for a functionally impaired individual does not require one to knowingly cause any harm. Harm must simply result from a caretaker's failure to provide. Felonious assault, on the other hand, requires one to know that her act, or failure to act, will cause serious physical harm. Both require proof of different elements, and conviction on either will not necessarily result in a conviction on both.

The key difference between the two statutes is the “knowing” aspect. For felonious assault, it meant knowing that the act or failure to act will cause harm. For failure to provide for an impaired person, it meant knowingly failing to provide care. Thus, even though both were based on the same outcomes, they were based on different conduct and were indeed different offenses.

REFERENCES

Ohio Jury Instructions Committee (1989). Ohio jury instructions. Cincinnati, OH: Anderson Publishing.

Ohio Revised Code, <http://codes.ohio.gov/>

Roman v. Estate of Gobbo, 99 Ohio St. 3d 260 (2003)

State v. Davis, Ohio App. LEXIS 2915 (2004)

State v. French, 171 Ohio St. 501 (1961)

REVIEW QUESTIONS

1. Which of the following is true regarding intoxication and actus reus in Ohio?
 - a. one who becomes intoxicated voluntarily has no defense under Ohio law
 - b. one who becomes intoxicated voluntarily can use it as a defense if he or she
 - c. can prove that he or she could not have physically committed the act
 - d. involuntary intoxication is met with skepticism in Ohio courts
 - e. a and c are correct
2. What was the ruling in Roman v. Estate of Gobbo?

- a. the defendant could be prosecuted for the neglect of her functionally impaired son
- b. the defendant could not be prosecuted for having an unruly child
- c. a person cannot be held liable for damages caused as a result of a blackout caused by an unforeseeable heart attack
- d. a doctor can be held liable for failure to provide adequate medical care

DISCUSSION QUESTION

Some states have tried to enact good Samaritan laws to criminalize acts of omission by ordinary citizens, even though they traditionally have had no legal duty to act. In effect, an ordinary citizen would be required to render some sort of assistance if he or she comes upon a crime in progress. The text discusses the Kitty Genovese case and how failure to act on the part of ordinary citizens played a role in Genovese's death. What are the benefits and downsides of such laws? Should those who ignored Genovese's screams be prosecuted? Explain.

WEB RESOURCES

- www.law.upenn.edu/fac/phrobins/intromodpencode.pdf - a website that provides information about the Model Penal Code
- www.abanet.org – the website of the American Bar Association, providing information about legal issues and links to various sites regarding the criminal law