

# Four criminal law questions

Law



Unit 2 Questions. Assignment #624408 Please explain the importance of the general principles of Actus Reus and Mens Rea. Both mens rea and actus reus are both required for any criminal act, in general. Without both there can be no conviction, or crime.

“ Mens rea” is defined as “ guilty thought,” or intent. The criminal must have the “ intent” to commit the crime, to meet the specific elements of any crime. With no intent to commit a crime, there is usually no crime (there are many exceptions). The intent can be specific intent or non-specific, such as negligence, or recklessness, where a duty is owed to others, but not followed, or disregarded.

“ Actus reus” is defines as “ guilty act.” The criminal must commit an act, to be convicted of a crime. Thinking about it, having intent to commit a crime, but not actually committing a crimeful act, results in no crime. Thinking about stealing a purse is not enough. One must think about it (men rea) and actually steal the purse (actus reus) for there to be a crime.

If one element is missing, there can be no conviction of a crime, generally.

2. Define, compare, and contrast constructive, actual, mere, and knowing possession.

Constructive possession: where an individual has actual control over property. He may not necessarily have actual ownership or possession of the same assets. A person with constructive control is equated as having the same legal position as a person with actual possession. For example, a person may own a car, and have actual possession of it, but a person who is let the keys and drives the car has constructive possession of the car.

Actual possession: is actual control or ownership of an item or piece of property. In the example above, one has actual possession of a car if it is

<https://assignbuster.com/four-criminal-law-questions/>

owned by him. He may give constructive possession away to others who may borrow the car, but still maintain actual possession.

Mere possession: is the possession of property without ownership of said property. It is the simple physical possession of an item, and does not infer rightful ownership or actual control over the item. No knowledge of the item's existence is necessary. It is used in child pornography cases many times, as mere possession of such pornography, regardless if one looked at it or maintained control over it, is enough. Actual knowledge of the item in one's possession or area of control is not needed.

Knowing possession: possession of materials with actual knowledge that the item is in one's control. A higher level of possession than mere possession.

Used often in dangerous weapons cases, where possession must be knowing; if one didn't actually know there was an illegal item in his control, mere possession is not enough.

3. Identify and define the two kinds of criminal omission.

Criminal omission: Omission, or the failure to act, constitutes an actus reus (guilty act) when the law imposes a duty to act, and the defendant breaches that duty. Some may have a medical, contractual duty to act, and breach it by omission, or failure to act.

Liability for omission is imposed by law: when one fails to perform certain conduct imposed by statute (for example, failing to file one's taxes is crime by omission).

Secondly, liability for omission may be defined in terms of commission, but failure to act may meet the definition of commission. For example, when a parent acts negligently and causes a child harm or death, the parent is liable by omission, with the breach of duty, even though homicides are defined as

<https://assignbuster.com/four-criminal-law-questions/>

acts of commission.

4. Please list and explain the four types of culpability in the MPC.

The MPC standardized the types of mens rea to determine the levels of mental states (intentional v accidental) of various crimes.

A. Purposely: Where it is one's conscious object to engage in illegal conduct or cause the result. One is aware of the attendant circumstances, or believes or hopes they exist.

B. Knowingly: defendant is aware that his conduct or nature of the circumstances exist, and is practically certain that the intent will occur. If knowledge of the existence of a particular fact is part of the crime, it is met if he is aware of a high probability of the existence of the fact, unless he actually believes that it does not exist.

C. Recklessly: A person consciously disregards a substantial and unjustifiable risk that a crime may happen, and the failure to perceive it involves a gross deviation from the standard of conduct of a reasonable person would observe.

D. Negligently: A person should be aware of a substantial or unjustifiable risk that a crime may occur, and his failure to perceive it involves a gross deviation from the standard of conduct a reasonable person would observe.