

# Mens rea and actus reus of a crime



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Two elements comprise nearly all crimes, a guilty mind (mens rea) and a guilty act (actus reus). “ An act does not make a man guilty of a crime, unless his mind is also guilty.” It is, therefore, not the act which is guilty but respectively the man and his mind. A substantiation of an actus reus is required in every crime. Also, there is a presumption that every element of the actus reus needs proof of a consequent mens rea. Where the presumption of mens rea is not applicable, such offences are called strict liability crimes.

Most crimes have the element of a mens rea. It must always be proven by the Prosecution that an unlawful conduct is committed by an accused. Furthermore, it will usually have to be proven that the accused committed with guilty mind in engaging such conduct. For instance, to ensure conviction for rape in contradiction to s. 2(1), 1981 Criminal Law (Rape) Act, it must be proven by the Prosecution that the accused committed unlawful conduct (i. e., non-consensual sexual intercourse with a woman), knowing that no consent is given by the woman or being thoughtless regarding whether or not the woman was consenting (mens rea). If the guilty act (actus reus) involves the particular outcome which the criminal conduct of the accused caused, a mens rea may have to be proven by the Prosecution as well with regard to the particular outcome. The actus reus, for instance, in the crime of assault producing injury in contradiction of s. 3, 1997 Non-Fatal Offences against the Person Act, is criminal act, i. e., an assault, and a distinct outcome (i. e., injury).

## **Intention and Mens Rea**

It is impossible to explore somebody's mind to determine their intentions. [3] The meaning of intention, in line with s. 14, 1861 Offences against the Person Act, deliberated by the Court of Criminal Appeal in *The People (DPP) v. Douglas and Hayes*, [4] provides that whoever shall fire at any person with the intention to carry out murder shall be guilty of a felony, whether or not it will result to any physical harm. The Special Criminal Court convicted the applicants *inter alia* of an offence in contradiction of s. 14 of the 1861 Act. They argued successfully that the requisite intent under s. 14 had not been proven. The court's judgment was conveyed by McWilliam J, stating that unless intent has actually been expressed by the accused, the intent of the accused can only be determined from a consideration of his actions and the surrounding circumstances.

What the accused intend or did not intend, only he can know such.

Apparently, if the accused expressed the intention to do a thing and carried on to accomplish that intention, proving that the accused acted with intent will be reasonably simple. Conversely, lacking such an expression, intention is harder to prove and other statements expressed by the accused must be considered by a jury or judge as well as the actions of the accused and the circumstances surrounding the case in coming to a decision whether intention is to be inferred or not.

## **Omissions Liability and Actus Reus**

Precisely what is meant by conduct is commonly referred to as an act. In criminal liability, an omission or a part thereof cannot form the actus reus of a crime as a general rule. As stated by McAuley and McCutcheon, [5] the <https://assignbuster.com/mens-rea-and-actus-reus-of-a-crime/>

common law traditionally disinclines to punish omissions and to illustrate this time honoured example, watching an infant drowning in a shallow pool by an able-bodied person does not constitute an offence. But this principle is also subject to exceptions.

The accused in DPP v. Bartley [6] had been convicted of different sexual offences. Carney J on passing judgment commented that where a believable complaint of felony is presented to a policeman, the policeman under the Common Law has no discretion in not investigating the complaint and arrest the indentified offender. This duty if not carried out strongly constitutes on the part of the policeman an illegality and makes him liable to prosecution on indictment. Palles CB remarked in Creagh v. Gamble [7] that a person shall be brought to justice where a credible suspicion of a felony is present against him. The Peace Officer is entitled and duty bound as well to apprehend him. This Common Law principle still applies. This was substantiated in R. v. Dytham. [8]

## **Concurrence of Mens Rea and Actus Reus**

If mens rea is to be proven by the Prosecution, it must moreover establish that mens rea existed at the time of the actus reus. At times whether the actus reus and mens rea concurred may not be apparent. The accused in Kaitamaki v. R. [9] was charged with rape. Having sexual intercourse with a woman without consent is the actus reus of rape. Knowing that it is non-consensual or whether there is consent or not by being reckless is the mens rea of rape. It was established that the woman initially consented to have sexual intercourse with the accused. In spite of the subsequent withdrawal of the woman's consent, the accused persisted and did not desist from having

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sexual intercourse. It was contended by the accused that at the time of the actus reus (i. e., penetration), consent was present, hence, he did not have a mens rea. Lord Scarman, the Privy Council, rejected this contention by stating that the act of sexual intercourse is continuing and ends only with withdrawal. Accordingly, the woman had the right to withdraw her consent at whatever time during sexual intercourse, even though she had initially given consent to penetration. The case of *Kaitamaki v. R.*[10] can be referred to in sustaining the proposition that an actus reus entails a continuing act, and as such, in order to ensure a conviction, the accused must be proven to have the required mens rea at some period during its continuation, although it is not essential to establish that at the outset the requisite mens rea was present with the accused.