

MENS REA AND ACTUS REUS: THE BASIC PRINCIPLE OF COMMITTING A CRIME

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ABSTRACT

The legislation was frequently not written with the intention of enticing the people, even if it was designed to protect the people. The history of common law is muddled by superfluous, cryptic terminology, and the layperson finds it challenging to understand the precise ideas¹ of the legislator due to the need to comprehend minute, ambiguous nuances. Although the introduction of the Revised Penal Code has reduced some of the legal languages², it may still be difficult for someone to comprehend their legal rights, their guilt, or the meaning of potentially obscure offences due to the sheer amount of information available³. We frequently hear the phrases "accessory" and "conspiracy" used in youth culture, but find it difficult to comprehend why "clearly devious" people frequently escape punishment in real life. In most circumstances, this propensity may be attributed to "Actus Reus and Mens Rea," the two elements of a crime that must exist for an individual to be guilty⁴. The classic explanation of "Actus Reus and Mens Rea" has significant drawbacks, which are discussed in this article. Important underlying concepts may be concealed by the word "Actus Reus," and there may be complications because of the fact that the term "Mens Rea" has several different meanings. Defenses are also taken into account since the way they are labeled and organized might be confusing and obfuscate underlying concepts. Understanding these components of the criminal law's restrictions can help one better comprehend the underlying concepts of criminal culpability.

Keywords: Actus Reus, Mens Rea, criminal liability, Criminal Defendant, General Exceptions, Good faith, Intention.

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¹ 'Common Law: What It Is, How It's Used, and How It Differs From Civil Law'
<<https://www.investopedia.com/terms/c/common-law.asp>>.

² Penal Laws of the Philippines, <https://www.lawteacher.net/free-law-essays/international-law/general-principles-international-law-essay.php>.

³ (PDF) Guilty Act, Guilty Mind: establishing Actus Reus and Mens Rea in situations of conspiracy and accessory,

https://www.researchgate.net/publication/261026128_Guilty_Act_Guilty_Mind_establishing_Actus_Reus_and_Mens_Rea_in_situations_of_conspiracy_and_accessory.

⁴ Elements of Crime | KnowLaw, <https://knowlaw.in/index.php/2020/09/27/elements-crime/>.

AN INTRODUCTION TO THE TOPIC

In the vast majority of crimes, "Mens Rea" and "Actus Reus" are the two key elements⁵. "Guilty mind (Mens Rea)" is a Latin phrase⁶. The rule's justification is that society shouldn't penalize those who accidentally do harm to others. "Actus Reus", which means "guilty act" in Latin, generally refers to an action that is taken to further a crime⁷. Society has made the decision to only penalize poor behaviors rather than harmful thoughts when a crime demands an overt deed⁸. The Latin phrase "Actus non facit reum nisi mens sit rea" directly translates, as "A person is not guilty unless both the mind and the act are guilty."⁹ If someone is guilty, it is established that either his or her thoughts and actions are guilty or blameworthy. To commit a crime, there has to be an occurrence of Mens Rea and Actus Reus simultaneously¹⁰. For example, let's say that there are 2 people Mr. A and Mr. B. They both went to the jungle for hunting. Mr. A uses a gun and shoots at a deer but the bullet accidentally hits Mr. B leading to his death. In this scene Mr. A will not be charged with murder because one of the basic elements for constituting a crime i.e., Mens Rea was missing. Different crimes call for varying levels of intent¹¹. For instance, the prosecution must show that the defendant purposefully took something to which he knew he was not entitled with the aim to permanently deny the owner of ownership in order to prove larceny. Contrarily, negligent homicide entails carelessness, accident, or inattention when it comes to one's responsibility to treat others with respect. Criminal negligent homicide is a common accusation used against a drunk driver who kills someone.

⁵ What Is Actus Reus and Mens Rea? | The Law Offices of Steven R. Adams, <https://www.notguiltyadams.com/faqs/what-is-actus-reus-and-mens-rea-cfm>.

⁶ 'Criminology Fundamentals of Crime, Criminal Law and Criminal Justice'.

⁷ ACTUS REUS & MENS REA – BarefootLaw, <https://barefootlaw.org/legal-dictionary/actus-reus-mens-rea-3/>.

⁸ Crime Prevention & Criminal Justice Module 7 Key Issues: 2- Justifying punishment in the community, <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-7/key-issues/2--justifying-punishment-in-the-community.html>.

⁹ Actus Reus non facit reum nisi mens sit rea - Oxford Reference, <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095349253;jsessionid=F6C9E5CA595574D008AA02D07ED1B296>.

¹⁰ Mens Rea And Actus Reus - Essentials Of A Crime - iPleaders, <https://blog.iplayers.in/mens-rea-actus-reus-essentials-crime/>.

¹¹ The Four Types of Mens Rea | Bruno Law Offices, <https://www.tombruno.com/articles/the-four-types-of-mens-rea/>.

CONCEPTUAL ANALYSIS OF THE CONCEPT

Mens Rea - Latin's translation of "guilty mind" is Mens Rea. Mens Rea is the legal term used to describe the mental state necessary to commit a crime¹². Mens Rea is often separated into four categories since the requirements for each degree of application vary depending on the crime:

- The defendant must have intended for the specified outcome in order to proceed to the first stage, intent. This amount of Mens Rea is frequently necessary for first-degree murder and the majority of stealing offences, but not for other crimes.
- A defendant must have knowledge of the act's anticipated outcome to be found guilty at the second level, known as knowing. This amount of intention is necessary for second-degree murder and the majority of attacks,
- The defendant must have been mindful of the risk in order to be found guilty of third-degree, recklessness. Involuntary manslaughter is one example, such as when a person dies as a result of drunk driving.
- The defendant must have been negligent on stage four, where it is required that they should have recognized a risk but did not. Although it is a typical civil norm, most crimes call for more than carelessness¹³.

Actus Reus - Actus Reus is the legal term for the act or omission that constitutes a crime's physical components. Actus Reus only refers to voluntarily proactive actions or omissions (failures to act) that result in prohibited behavior under the law¹⁴.

Criminal Liability - Criminal culpability is the term used to describe both the blame for an act and the punishment that society imposes. Because crimes hurt humanity collectively, a state attorney (prosecutor) files charges against the criminal on behalf of its people¹⁵. If the prosecution can demonstrate that the defendant committed the crime and had the necessary intent to be held accountable, then the defendant may be found guilty of the offense¹⁶.

¹² Mens Rea - A Defendant's Mental State - FindLaw, <https://www.findlaw.com/criminal/criminal-law-basics/mens-rea-a-defendant-s-mental-state.html>.

¹³ Mens Rea, <https://lawshelf.com/shortvideoscontentview/mens-rea>.

¹⁴ Actus Reus | Wex | US Law | LII / Legal Information Institute, https://www.law.cornell.edu/wex/actus_reus.

¹⁵ Criminal Liability | CriminalDefenseLawyer.com, <https://www.criminaldefenselawyer.com/resources/criminal-liability.htm>.

¹⁶ What Is Criminal Liability? | Federal Criminal Law Center, <https://federalcriminallawcenter.com/2015/01/criminal-liability/>.

Criminal Defendant - Criminal defendants are those who have been accused of committing "a Misdemeanor or felony offense" and have been the subject of a presentment, indictment, or other legal action, but have not yet received a verdict or punishment for the crime¹⁷.

General Exceptions - The arguments offered to the defendant which absolve criminal responsibility are known as general exceptions¹⁸. There are various exclusions that might render an act or omission non-criminal or non-offense, which implies that an accused can be shielded from criminal accountability for any unlawful act or omission done by him¹⁹.

Good Faith - Indian criminal law provides a definition of good faith in Section 52. Nothing should be spoken, done, or taken seriously without adequate consideration. When an act is committed in good faith and without any ulterior motives or bad intentions, it typically serves as a good defense under the IPC or other criminal statutes²⁰.

Intention - Intention describes a deliberate activity and a conscious choice to carry out an illegal crime²¹.

INTENTION

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"Specific intent" and "general intent" are other terms that are used to describe someone's mental state²². The prosecution need not show that the defendant actually wanted the particular result; general intent is the desire to carry out any unlawful activity²³. The phrase "particular purpose" often refers to an element of a crime that is distinguishable from the Actus Reus²⁴ and usually indicates a purposeful or knowing state of mind. For instance, the prosecution must show that the defendant meant to take the item in a theft case. Statutes frequently utilize phrases like "purposeful," "knowing," "reckless," or "negligent" to describe varying degrees of intent²⁵. The

¹⁷ Criminal defendant Definition | Law Insider, <https://www.lawinsider.com/dictionary/criminal-defendant>.

¹⁸ General Exceptions under Indian Criminal justice system - LexForti, <https://lexforti.com/legal-news/general-exceptions-under-indian-criminal-justice-system/>.

¹⁹ General Exceptions in Indian Penal Code (IPC) - Law Corner, <https://lawcorner.in/general-exceptions-in-indian-penal-code-ipc/>.

²⁰ Good Faith under Indian Penal Code - Indian Law Portal, <https://indianlawportal.co.in/good-faith-under-indian-penal-code/>.

²¹ Difference Between Intention and Motive (with Comparison Chart) - Key Differences, <https://keydifferences.com/difference-between-intention-and-motive.html>.

²² Meaning of "Intent" in Criminal Law | Nolo, <https://www.nolo.com/legal-encyclopedia/general-vs-specific-intent.html>.

²³ Foundations of Law - Common Law Mens Rea, <https://lawshelf.com/coursewarecontentview/common-law-mens-rea>.

²⁴ IPC India - Crime and Its essential elements under IPC 1860, <https://lawsstudy.com/ipc-india-crime-and-its-essential-elements-under-ipc-1860/>.

²⁵ 'Chapter 5: Mens Rea, Concurrence, and Causation'.

law itself says “Ignorantia Facti Excusat” a Latin term which means, “Ignorance of Fact is an excuse” but “Ignorantia Juris non excusat” which means, “Ignorance of Law is no Excuse²⁶.”

MISTAKE OF FACT²⁷

Mistake of fact is a General Defence by the virtue of The Indian Penal Code, 1860 i.e., Sections 76 and 79²⁸. Mistake of fact is one of the defenses available to get an exemption from Criminal Liability. The basic Principle of this defence is that the act or offence must not be Pre-arranged or Pre-meditated or Pre-planned.

“Section 76 of The Indian Penal Code, 1860” states the act that is done by a person who is bound or by the virtue of a Mistake of fact, believes himself to be bound by law²⁹. This section clearly states that any person who has done an act or offence who is or who by reason of a Mistake of Fact and not by reason of Mistake of law had done an act or offence by the virtue of good faith, believes himself to be bound or commanded by law to do that act or offence.

In Case “R v. Ms. Tolson (1889) 23 QBD 168.³⁰”

Facts of the Case: The Appellant and Defendant were married. The appellant went missing as the ship he was on, got lost in the sea in December 1881. The defendant waited for the Appellant (her husband) for six years, hoping that someday he will return. The defendant then remarried eventually believing her husband to be dead. After her remarriage, eleven months later, her husband (Appellant) returned and then when he got the knowledge of his wife's remarriage, filed the appeal against her for bigamy³¹.

Judgment of the Case: The appeals court stated that notwithstanding the absence of phrases like "knowingly committing bigamy" or "deliberately committing bigamy," which would have excused her, Ms. Tolson was nevertheless protected in this case by an antiquated common law

²⁶ *ibid*.

²⁷ Mistake as a General Exception under IPC - Section 76 and 79, <https://www.writinglaw.com/mistake-as-general-exception-ipc/>.

²⁸ Mistake as a General Exception under IPC - Section 76 and 79, <https://www.writinglaw.com/mistake-as-general-exception-ipc/>.

²⁹ IPC Section 76 - Act done by a person bound, or by mistake of fact believing himself bound, by law | Devgan.in, <https://devgan.in/ipc/section/76/>.

³⁰ R v Tolson - case summary - R v Tolson (1889) 23 QBD The appellant married in Sept 1880. In Dec - Studocu, <https://www.studocu.com/my/document/universiti-kebangsaan-malaysia/criminal-law-ii/r-v-tolson-case-summary/10709269>.

³¹ Case Summary : Queen v. Tolson - E-Justice India, <https://www.ejusticeindia.com/case-summary-queen-v-tolson/>.

principle. The court determined that an "honest and reasonable belief" in the presence of circumstances that, if true, would render the accused's actions innocent constituted a valid defence³².

In Case “R v. Prince (1875) LR 2 CCR 154.”³³”

Facts of the Case: Henry Prince was found guilty of removing an unmarried girl under the age of 16 from her father's custody without the father's permission “under Section 55 of the Offenses against Person Act, 1861.” Although Annie Phillips, the girl, was actually 14 years old, Henry Prince had a good basis to assume that she was 18 because Annie Phillips had stated it to him. Against his conviction, the appellant filed an appeal³⁴.

Judgment of the Case: The court is not required to construe a statute's absence of a Mens Rea requirement as requiring Mens Rea for an offense. Since the offense included strict responsibility for age, it was not necessary to prove that the defendant had actual awareness of her age in order to prove the offense. Because Henry Prince's reasonable belief was inadmissible, the conviction was upheld³⁵.

“Section 79 of The Indian Penal Code, 1860” states the act done by a person justified or believes by the Mistake of Fact that his act is justified by law. The Section clearly states that an act or offence done by a person who is justified by law or who by the reason of Mistake of Fact and not by the virtue of Mistake of Law, in good faith believes his actions to be justified by law when doing that act or offence. An element of the crime will be ruled out if the criminal defendant can show that he committed the conduct because of a factual error or misinterpretation of certain information³⁶.

³² R v Tolson [1889] 23 QBD 168, https://www.oxbridgenotes.co.uk/law_cases/r-v-tolson.

³³ R v. Prince - Grade: A (Very helpful. It's a case law) - Index ! Topic Pg 1. Introduction 3 2. - Studocu, <https://www.studocu.com/in/document/central-university-of-kashmir/international-trade-law/r-v-prince-grade-a-very-helpful-its-a-case-law/16317721>.

³⁴ Regina v. Prince Case Brief for Law Students | Case Brief for Law Students, <https://www.casebriefs.com/blog/law/criminal-law/criminal-law-keyed-to-kadish/defining-criminal-conduct-the-elements-of-just-punishment/regina-v-prince/>.

³⁵ R v Prince - 1875, <https://www.lawteacher.net/cases/r-v-prince-1875.php>.

³⁶ Explained: Section 79 of IPC - TheLawmatics, https://thelawmatics.in/explained-section-79-of-ipc/?utm_source=rss&utm_medium=rss&utm_campaign=explained-section-79-of-ipc.

In Case “State of Orissa v. Khora Ghasi (1978) Cri LJ 1305³⁷”

Facts of the Case: The accused a tribal in the forest, with bona fide intention believed that it was a bear, took a shoot at the bear who was destroying the crop field, by mistake, shot the victim, which led to his death³⁸.

Judgment of the Case: The Court held that the death that occurred was by mistake of fact and not by mistake of law. The Hon’ble High Court of Orissa acquitted the accused by the virtue of “Section 79 of Indian Penal Code, 1860.³⁹”

In Case “Chirangi v. State (1952)53 Cr LJ 1212 (M.P.)⁴⁰”

Facts of the Case: Together with his kid, Chirangi Lohar traveled to a hilltop. His nephew discovered that the boy was missing and that the man had an axe that was covered in blood when he got home and went to bed. When questioned, he claimed that he had gone mad and had killed his kid under the false pretense that a tiger was approaching. His psychiatrist provided evidence to support his claim of insanity. Furthermore, there was a tremendously strong bond between father and kid, which supports the claim that Chirangi had no justification for killing his own son⁴¹.

Judgment of the Case: The defence of mistake of fact was applied and therefore the accused Chirangi Lohar wasn’t held responsible for the offence of killing his own son as he was into a belief that there was a tiger that was approaching towards him⁴².

³⁷ pec law bussiness law with bussiness - CASE: State of Orissa v. Khora Ghasi (1978) Cri LJ 1305, - Studocu, <https://www.studocu.com/my/document/inti-international-university/business-law/pec-law-bussiness-law-with-bussiness/21105285>.

³⁸ (Cases Mistake of Fact) Study material on IPC Cases Section -79, <https://www.happyhealthysociety.com/indian-penal-code-cases-relating-to-mistake-of-fact-sec-79/>.

³⁹ State of Orissa v. Khora Ghasi Archives - The Fact Factor, <https://thefactfactor.com/tag/state-of-orissa-v-khora-ghasi/>.

⁴⁰ Chirangi vs State on 19 February 1952 - Bombay High Court Chirangi vs State on 19 February, 1952 - Studocu, <https://www.studocu.com/my/document/universiti-teknologi-mara/criminal-law-1/chirangi-vs-state-on-19-february-1952/21211524>.

⁴¹ CHIRANGI Vs STATE - Law Insider India, <https://www.lawinsider.in/judgment/chirangi-vs-state>.

⁴² Chirangi v. State (1952) Cri LJ 1212 Archives - The Fact Factor, <https://thefactfactor.com/tag/chirangi-v-state-1952-cri-lj-1212/>.

MISTAKE OF LAW⁴³

There is no defence that is considered when there is a mistake of law by someone. When a person commits a crime and asks for a defence for the mistake of Law, the Court does not allow or consider it as a defence⁴⁴.

In the case “[Grant v. Borg \(1982\) 1 WLR 638 HL](#)”.

WHAT ARE MEN'S REA AND ACTUS REUS TOGETHER⁴⁵?

A person's intent and the act itself, if it is unlawful, come together to generate a crime rather than an act acting alone⁴⁶. There are times when the specifics of the case are also considered. The mere desire to murder someone does not constitute a crime, for instance, if person "A" is furious with person "B" and, in a moment of weakness, desires to kill person "B," but afterward decides against doing so. The same thing may happen if someone accidentally enters someone else's property without intending to harm or hurt that person. Because he had no desire to do the act, the individual cannot be held accountable in such a situation.

DIFFERENCE BETWEEN MEN'S REA AND ACTUS REUS⁴⁷.

There is not a great difference between Mens Rea and Actus Reus as both are the essential element that constitutes a crime. Both of these are the only essential factor for establishing a crime. The only difference is based on their very name itself i.e. Mens Rea justifies a “Mental element” and Actus Reum justifies a “Physical Element”. In many criminal acts, the mental element i.e. “Mens Rea” befalls prior to the Actus Reus because the person who is committing the crime must have the intention or knowledge of the act or offense that the person will be committing.

⁴³ ‘SUBSTANTIVE CRIMINAL LAW LAW Mistake of Law and Facts, Necessity, Accident and Infancy’.

⁴⁴ Mistake of Fact and Mistake of Law, <https://blog.ipleaders.in/mistake-fact-mistake-law-defence/>.

⁴⁵ What is the Relationship Between Actus Reus and Mens Rea?, <https://www.mylawquestions.com/what-is-the-relationship-between-actus-reus-and-mens-rea.htm>.

⁴⁶ 4.2 Criminal Intent | Criminal Law, <https://courses.lumenlearning.com/suny-criminallaw/chapter/4-2-criminal-intent/>.

⁴⁷ Difference Between Mens Rea and Actus Reus | Compare the Difference Between Similar Terms, <https://www.differencebetween.com/difference-between-mens-rea-and-vs-actus-reus/>.

RELATIONSHIP BETWEEN THE DEGREE OF THE CRIME AND THE PUNISHMENT DESIGNATED FOR THE CRIME INFLICTED⁴⁸

"Mens Rea" is the legal term for a "guilty state of mind" that includes awareness of the consequences as well as intention or purpose. "Mens Rea" refers to the degree of mental involvement in the crime and is a direct indicator of the degree of accountability⁴⁹. The severity of the penalty increases with the severity of "Mens Rea" in the offense⁵⁰.

For instance, intentionally killing a person, which would be considered murder, would carry the harshest penalty under the law due to the high degree of "Mens Rea" involved, but if someone is accidentally hit and dies, the person would not be held responsible for any crime since there was no "Mens Rea."

CASES RELATED TO MEN'S REA AND ACTUS REUS

In Case "Sweet v. Parsley [1970] AC 132⁵¹"

Facts of the Case: The subtenant of the farmhouse where cannabis resin was discovered was the appellant, Stephanie Sweet. Stephanie Sweet had rented out numerous rooms in the home to renters because she no longer resided there. Even while she still had a room, she seldom went in to get mail or pay rent. The defendant was accused and found guilty under Section 5(b) of the Dangerous Drugs Act of 1965 (the 1965 Act) of "being interested in the administration of premises used for the purpose of smoking cannabis resin⁵².

Judgment of the Case: "Section 5(b) of the Dangerous Drugs Act of 1965" established no absolute offense. The assumption of "Mens Rea" applies to "real" criminal offenses unless Parliament expressly declares that an offense is an absolute or regulatory offense. Because the phrase "being interested in the management" in Section 5(b) had to be interpreted as implying knowledge of the premises' use for an unlawful purpose, the offense constituted a "true crime" rather than a regulatory crime. As a result, the conviction was overturned because Stephanie

⁴⁸ The Relationship Between Crime & Punishment - Video & Lesson Transcript | Study.com, <https://study.com/academy/lesson/the-relationship-between-crime-punishment.html>.

⁴⁹ Mens Rea: The Criminal State of Mind, <https://lawshelf.com/shortvideoscontentview/mens-rea-the-criminal-state-of-mind>.

⁵⁰ Theodore G Chiricos and Gordon P Waldo, 'Punishment and Crime: An Examination of Some Empirical Evidence' (1970) 18 Social Problems 200.

⁵¹ Sweet v Parsley | [1970] AC 132 | United Kingdom House of Lords | Judgment | Law | CaseMine, <https://www.casemine.com/judgement/uk/5a938b3e60d03e5f6b82ba3f>.

⁵² Sweet v Parsley - 1970, <https://www.lawteacher.net/cases/sweet-v-parsley-1970.php>.

Sweet because it lacked the necessary “Mens Rea” to commit the crime as defined by “Section 5(b) of the Dangerous Drugs act, 1965.”⁵³”

CONCLUSION

Mens Rea and Actus Reus are the two fundamental principles of criminal law that are used in the majority of countries⁵⁴. The legal word for the mental condition that results in a wilful breach of the law is Mens Rea. Mens Rea thus refers to having the intent to commit evil. An act must be carried out with the purpose to commit a crime. Mens Rea, or vice versa, is Latin meaning "guilty mind"⁵⁵. The Actus Reus, on the other hand, speaks of an "act of guilt"⁵⁶. A crime must be proven to have been committed⁵⁷. Certain guidelines must be observed while dealing with crimes, and the accused must be given "the benefit of the doubt"⁵⁸. The onus of proving the defendant's guilt without a doubt is with the prosecution⁵⁹. It is the responsibility of the prosecution to prove the defendant's guilt beyond a reasonable doubt⁶⁰.

⁵³ Sweet v Parsley [1970] AC 132, https://www.oxbridgenotes.co.uk/law_cases/sweet-v-parsley.

⁵⁴ Mens Rea and Actus Reus - ICLR, <https://www.iclr.co.uk/knowledge/glossary/mens-rea-and-actus-reus/>.

⁵⁵ All you need to know about Mens Rea - iPleaders, <https://blog.ipleaders.in/all-you-need-to-know-about-mens-rea/>.

⁵⁶ ‘Actus Reus | Wex | US Law | LII / Legal Information Institute’ (n 14).

⁵⁷ Smt Shaik Faizunnisa, ‘CORPUS DELECTI’.

⁵⁸ Benefit of the doubt must go to accused: Supreme Court - The Hindu, <https://www.thehindu.com/news/national/benefit-of-the-doubt-must-go-to-accused-supreme-court/article25776010.ece>.

⁵⁹ Reasonable Doubt: Definition, How to Prove, and 3 Burdens, <https://www.investopedia.com/terms/r/reasonable-doubt.asp>.

⁶⁰ beyond a reasonable doubt | Wex | US Law | LII / Legal Information Institute, https://www.law.cornell.edu/wex/beyond_a_reasonable_doubt.

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