

Lesson 19

Criminal Liability: Introduction

Aims

The aims of this lesson are to give you an outline understanding of the following:

- *actus reus* and *mens rea*
- strict liability

Context

This lesson will introduce you to Criminal Liability in general — to what crime is and what defences to it there are. The two elements of criminal liability are *actus reus* and *mens rea*. Lesson 19 deals with certain specific crimes in more particular detail. We shall also look at strict liability crimes and how they are justified.



19.1 Introduction

This lesson will introduce you to the principles of criminal law. In a criminal trial the prosecution is faced with the task of proving two essential elements, *actus reus* – the ‘guilty act’ and *mens rea* – the ‘guilty mind’. The two elements must be present for someone to be convicted of a crime. The only exception to this is crimes of strict liability which we shall also discuss in this lesson.

Depending on what the crime is, the *actus reus* and *mens rea* will be different but generally speaking the *actus reus* is the physical act, the committing of the crime and the *mens rea* is the thought process behind it – the dishonest intent in the criminal’s mind.

19.2 Nature of a Crime

There is no statutory definition of a crime and, indeed, any attempt to define a crime in the sense of enabling one to recognise an act as criminal or not, encounters this difficulty; it is not so much the act itself but rather its legal consequences that are the determining factor as to whether an act is classifiable as criminal or not. In the words of Lord Atkin in *PROPRIETARY ARTICLES TRADE ASSOCIATION v A-G FOR CANADA* [1931] A.C. 310:

‘The criminal quality of an act cannot be discerned by intuition; nor can it be discovered by reference to any standard but one: is the act prohibited with penal consequences’.

19.3 Criminal Responsibility

The Elements of a Crime

The elements of a crime are ***actus reus*** (a wrongful act) and ***mens rea*** (a guilty mind) and before a man can be convicted of a crime it is usually necessary for the prosecution to prove beyond reasonable doubt:

- that a certain event, or a certain state of affairs which is forbidden by the criminal law, has been caused by his conduct (the *actus reus*)
- that this conduct was accompanied by a prescribed state of mind (the *mens rea* of the crime).

This principle of common law is expressed in the Common Law maximum ‘*actus non facit reum, nisi mens sit rea*’ (an act does not make a person guilty unless the mind is guilty).

Actus reus

As *mens rea* is to be found in the mind of the accused, it follows that the *actus reus* of a particular crime includes all the elements in the definition of a crime except those which relate to the accused's state of mind. It is not merely an act (or an omission to act) in the ordinary meaning of that term. Indeed, it may include not only the accused's conduct and its consequences but also the surrounding circumstances, in so far as they are relevant. *Actus reus* is best illustrated by looking at the case law.



R v Lewis [1970] Crim L R 647

Mrs Lewis jumped out of a window to avoid her violent husband who was banging on the bedroom door and threatening to kill her. Mrs Lewis broke both legs and her husband was charged with causing grievous bodily harm. He claimed that as he was not in the same room as her, there was no causation between his threats and her resulting injury, the *actus reus* was not present. The court held that the reasonable act of the victim in seeking to escape being subjected to a crime was the link between his threats and her injuries and therefore he was guilty as charged.

In the above case the victim takes **avoiding action** to escape violence. The defendant tried to rely on the avoiding action as his defence. The avoiding action taken by the victim has to be reasonable and that would be ascertained by the court after consideration of the facts. If Mrs Jordan had jumped out of the window when she could have safely climbed down a fire escape, then the court would have been unlikely to consider her actions reasonable.

Intervention by a third party can make *actus reus* difficult to establish. That is illustrated in the following cases.



R v Smith (Thomas Joseph) [1959] 2 QB 35 [1959] AC

Smith stabbed the victim then regretted his action, he dropped his victim off at the hospital to get treatment. Once in emergency care, there was no blood transfusion. The victim was given saline solution and the doctor used artificial respiration (not knowing that the victim was suffering from a pierced lung). It was stated that with proper treatment, chances of the victim's survival was about 75 per cent, but the treatment he received was very poor. The defence argued that death was not the sole and natural consequence of the wound, so it did not flow directly from it. The court held that the original stab wound was an "operating and substantial cause of death". Smith was convicted of manslaughter.

R v Cheshire (1991) 93 Cr App Rep 251

Cheshire shot his victim twice and caused respiratory problems. He was given a [tracheotomy](#), but after two months this caused complications and he died. The court decided that despite evidence of medical negligence, the defendant's responsibility should not be absolved, since the victim would not have been in medical care, were it not for his actions.

Both the above cases demonstrate the '[but for test](#)' which we came across in the section on torts. The end result would not have happened 'but for' the action of the defendant. The defendant's actions were an 'operating and substantial cause' of death. Compare these cases with *Jordan*, below.



R v Jordan [1956] 40 Cr App Rep 152

The victim was stabbed. He was admitted to hospital and died 8 days later. The defendant was convicted of murder. Later evidence came to light that the medical treatment had been 'palpably wrong', and the defendant appealed against the conviction.

The new evidence showed that the victim had been given an antibiotic that he was allergic to. It had been withdrawn by one doctor, but reintroduced by another doctor. Large quantities of liquid had also been given intravenously and broncho-pneumonia had set in. The conviction was quashed, because two separate features and independent features of medical treatment were, in the opinion of doctors, palpably wrong and these were the direct and immediate cause of death.

What happens if the victim does not help themselves? This happened in the following case.



R v Blaue [1975] 61 Cr App R 271

Blaue demanded sex from an 18 year old woman. She declined and he stabbed her four times; the wound penetrated her lung and she needed a blood transfusion and surgery to save her life. She refused because of her religious beliefs (Jehovah's Witness) and died. Medical evidence showed that she would not have died if she had received treatment. The defence argued that the victim's refusal to accept medical treatment broke the chain of causation between the stabbing and her death. The court found that the wound Blaue caused had been an 'operating and substantial cause' of her death and that as a matter of [public policy](#), those 'who use violence on others must take their victims as they find them'. Blaue was convicted of murder.

'Eggshell skull' Rule

The court statement in Blaue about taking victims as they find them, demonstrates the 'thin-skin' or 'eggshell skull' rule. This is the rule that holds one liable for all consequences resulting from his or her tortious (usually negligent or criminal acts) which lead to an injury to another person, even if the victim suffers an unusually high level of damage.

Mens rea

Mens rea means a 'blameworthy state of mind' but what the law regards as blameworthy varies from one offence to another. In R v WOOLLIN[1997] 1 Cr App R 97, the House of Lords indicated that the intention of foresight includes virtual certainty. They based their thinking on the Law Commission proposal which is: 'a person acts...intentionally with respect to a result when:

1. it is the purpose to CAUSE it;
2. although it is not his purpose to cause that result, he is aware that it would occur in the ordinary course of events if he were to succeed in his purpose of causing some other result.'

However, in general *mens rea* takes the following forms:

Specific Intent

Such a state of mind connotes 'foresight of the consequences' with a desire to produce them. They specifically wanted the result they achieved by their actions. Proof of specific intent is always a

requirement for the most serious crimes that include murder, burglary, robbery and theft.



R v Lipman [1970] 1 QB 152

Lipman and his girlfriend took a large quantity of LSD. Lipman had hallucinations and imagined he was being attacked by snakes. In an effort to defend himself he killed his girlfriend by choking her. The jury could not find specific intention due to his intoxicated state. He was convicted of manslaughter

R v Latimer (1886) 17 QBD 359

Latimer aimed a blow at someone with his belt. The belt recoiled off that person and hit a woman in the face causing severe injuries. The court held that he was liable for maliciously wounding the unexpected victim as his malice – his *mens rea* was transferred from his intended victim to his unintended victim. This is called the doctrine of transferred malice and is only applied if the crime which occurred is the same as that intended.

Recklessness

This connotes foresight of the consequences without the desire to produce them. The accused realized there was a risk but continued with their actions. Recklessness must be proved for assault and battery crimes. Through case law, the courts have developed two definitions of recklessness. The first (and most widely applied) definition is the subjective test that was applied in the Cunningham case below.



R v Cunningham [1957] 2 QB 396 Court of Appeal
Cunningham ripped a gas meter from the wall to steal in order to steal the money from it. This caused gas to escape that seeped through cracks in the wall and poisoned his future mother-in-law. He was charged under s 23 of the Offences against the Person Act 1861 which provides 'Whosoever shall unlawfully and maliciously administer to or cause to be administered to or taken by any other person any poison or other destructive or noxious thing, so as thereby to endanger the life of such person, or so as thereby to inflict upon such person any grievous bodily harm, shall be guilty of felony ...' The trial judge told the jury that malicious meant wicked. Cunningham was convicted and he appealed.

The appeal judges held that malicious means either:

- (1) an actual intention to do the particular kind of harm that in fact was done; or
- (2) recklessness as to whether such harm should occur or not (i.e. the accused has foreseen that the particular kind of harm might be done and yet has gone on to take the risk of it).

So the subjective test of recklessness considers whether the defendant knows the risk, is willing to take it and takes it deliberately. The question the jury must consider is: 'was the risk in the defendant's mind at the time the crime was committed?'

The second test is the objective test, that is that the risk must be obvious to the reasonable man, in that any reasonable man would have realised it if he had thought about it. It does not have to be in the defendant's mind at the time the crime was committed. This is a wider definition of recklessness – a person is reckless in this sense when they perform an act which creates an obvious risk, and, when performing the act, they have either given no thought to the possibility of such a risk arising or they recognise that some risk exists but continued with their actions. This test was established in the Caldwell case below.



MPC v Caldwell [1982] AC 341.

Caldwell was a disgruntled ex-employee of a hotel. One night he got drunk then went to the hotel and set it on fire. There were ten people staying in the hotel at the time, but no serious harm was caused. Caldwell pleaded guilty to criminal damage and not guilty to the more serious charge of criminal damage with intent to endanger life or recklessness as to whether life would be endangered.

The defence argued that due to his drunken state it had never crossed his mind that lives might be endangered by his actions, he had simply set fire to the hotel because of his grudge against his former employer. The House of Lords re-affirmed *Cunningham* as a form of recklessness in criminal law, but introduced an alternative form of recklessness based upon the defendant's failure to refer to a risk which would have been obvious to the reasonable person. Lord Diplock held that a defendant was reckless as to whether they damaged *property* if they created a risk of damage which would have been obvious to the reasonable man and they either –

- had not given any thought to the possibility of such a risk when they carried out the act in question, or
- had recognised that there was some risk involved and nonetheless went on to carry it out.

The Caldwell test of recklessness is applied in cases of criminal damage, for other crimes involving recklessness the *Cunningham* test is applied.

Strict Liability

In the case of most serious crimes, intention or recklessness must be proved, but in some instances liability is based on negligence. Further, in some situations, the accused may be convicted although his conduct was neither intentional nor reckless nor negligent with reference to facts and consequences mentioned in the definition of the charge. Such crimes are known as offences of strict liability, and are almost invariably the creation of statute, i.e. no *mens rea* is required. For example, the Health and Safety at Work etc. Act 1974 provides that certain machines must have safety covers, and if these covers are not fixed, the employers are strictly liable.



Winzar v Chief Constable of Kent (1983) *The Times*, March 28, 1983. The police were called to remove Winzar from a hospital corridor. He was drunk and slumped against the wall. The police moved him to their car on the hospital forecourt, then charged him with being found drunk on a highway. The court held that it was enough to show that Winzar had been present on the highway and was perceived to be drunk. It did not matter that his presence on the highway was momentary and not of his own volition. The court held that the offence was committed if:

- (1) a person is in a public place or a highway;
- (2) they are drunk; and
- (3) in those circumstances they are perceived to be there and to be drunk.

Strowger v. John [1974] R.T.R. 124

The defendant was convicted of not displaying a car excise disc (tax disc) on his windscreen contrary to Section 12 of the Vehicles (Excise) Act 1971. There was a tax disc in the car at the time, but it had fallen from the windscreen and on to the floor. The defendant was able to prove this in court. The crime was one of strict liability, so the defendant was convicted regardless of the lack of intent, recklessness or even negligence on his part.

R v Shorrock [1994] QB 279

A farmer hired out his field but did not realise that an acid house party was planned. He was convicted of public nuisance as it was found that he ought to have known the nature of the party, so whether he actually knew or not was not relevant.

R v Prince (1875) LR 2 CCR 154

Prince was charged with taking an unmarried girl, below sixteen, against the will of her father. The defendant had believed her to be eighteen. The under age element on the offence was one of strict liability, therefore the mistaken belief that the girl was sixteen was irrelevant.

Pharmaceutical Society of Great Britain v Storkwain (1986) 2 ALL ER 635

A pharmacist supplied drugs to a patient who used a forged doctor's prescription. He had no reason to suspect it was a forgery but nevertheless he was convicted of supplying drugs without a prescription. The crime carries a maximum prison term of three months. The justification is that the misuse of drugs is a grave social evil and pharmacists should be encouraged to take even unreasonable care to verify prescriptions before supplying drugs.

Harrow London Borough Council v Shah and Shah [1999] 3 All ER 302

Mr and Mrs Shah ran a shop that sold lottery tickets. They told their staff not to sell tickets to anyone under the age of 16 and repeatedly reminded them of this rule. A member of their staff sold a ticket to a 13 year-old when both defendants were away from the shop floor. They were charged and found guilty as the offence was one of strict liability.

How can strict liability be justified?

Public interest is the main justification. Most strict liability offences are designed to protect the public: Health and Safety at work, pollution, food contamination etc are all areas that could prove very dangerous if they were not strictly regulated. If the law is known to be particularly demanding in these areas, then the hope is that it will encourage extra vigilance. Another justification is that proving *mens rea* is sometimes impossible – but it is enough to show that the *actus reus* is present.

It does seem particularly unjust that someone can be convicted of a crime they did not have any knowledge of or where they took all possible care to avoid committing, particularly offences that could result in a prison sentence. However, most people consider failing to protect the public – and in particular minors, would be an even greater unjust act.

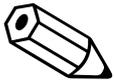
Activity 1

Fill in the gaps using the following words:

recklessness/treatment/avoiding/specific/defendant/strict liability/*mens rea*/murder/unreasonable/*actus reus*

The majority of crimes require two elements, *actus reus* and (1)_____ to be present. (2)_____ is usually an act, but in some cases it can be an omission. A victim may take (3)_____ action and make the situation worse, but the defendant will still be culpable as their initial act started the chain of events; unless the action taken by the victim was (4)_____ or too far removed from the original attack. If a victim refuses (5)_____ and then dies, the defendant will still be guilty of murder even though the treatment could have saved the victim's life.

For most serious crimes, the defendant must have (6)_____ intent. An example of one of these crimes is (7)_____. For other crimes the law only requires a basic intent or (8)_____, an example being assault. Some crimes, called (9)_____ crimes, do not require any intent at all. An example of one of these crimes is supplying drugs without a prescription as we saw in *Pharmaceutical Society of Great Britain v Storkwain*. Normally. But not always, offences that carry prison sentences are not strict liability crimes as it can be very unfair on the (10)_____ to send them to prison when they had no intention of committing a criminal offence.

**Activity 2**

- 1 What are the two elements of a crime?
- 2 Who has to prove that the two elements existed?
- 3 Can someone commit a crime by omission?
- 4 Are the two elements always the same for every crime?
- 5 Is a defendant still guilty if the victim makes the situation worse?
- 6 If a third party intervenes does that break the chain of causation?
- 7 What type of crime does not require mens rea?
- 8 What is a crime of specific intent?
- 9 Can someone commit murder by being reckless?
- 10 What is the main problem with strict liability crimes?



19.4 Self-assessment Test: Lesson 19

1. In order to be found guilty of a crime, in the majority of cases the prosecution must prove that the two elements of the crime were present. What are those elements called and what do they mean?
2. There are some exceptions to this requirement called crimes of strict liability. Which element does not have to exist for a person to be guilty of a strict liability crime?
3. Can you name a statute that creates strict liability offences in the work place to protect people on the premises?
4. In *Strowger v John* (1974), which strict liability crime was the accused found guilty of?
5. Are the two required elements the same for every crime?
6. What is the main justification for having crimes of strict liability?
7. Can you name a case where a pharmacist narrowly avoided being sent to prison as a result of strict liability?
8. *Actus reus* is not always an act. What else can it be?
9. Give two examples of things that can interrupt the chain of causation.
10. If the victim acts in a way that makes the situation worse, can the attacker still be guilty of the crime? Can you illustrate this with reference to case law?
11. Most serious crimes cannot be committed recklessly, the defendant must be shown to have had the required Examples of such crimes are murder and theft.
12. Less serious crimes only require basic intent – or recklessness. There are two tests for recklessness, what are they called?

Suggested Answer to Activity One

1. *mens rea*
2. *actus reus*
3. avoiding
4. unreasonable
5. treatment
6. specific
7. murder
8. recklessness

9. strict liability
10. defendant

Suggested Answers to Activity Two

1. *Actus reus* and *mens rea*.
2. The prosecution.
3. Yes, for example, failing to stop at a red light.
4. No, they vary depending on the crime.
5. Nearly always, unless the victim's action was unreasonable or too far removed from the original act.
6. Not usually, courts are reluctant to say the chain has been broken – unless, for instance, the medical treatment administered is extremely poor (R v Jordan).
7. Crimes of specific intent.
8. A crime where the defendant intended a particular consequence.
9. No, murder is a crime of specific intent.
10. People may commit crimes even though they took all possible care not to.