



EAGLE INSTITUTE OF LAW



Mens rea

The elements of 'Mens rea' and 'Actus Reus' have been derived from the Latin maxim of **Actus non facit reum nisi mens sit rea** which means; 'An act does not make a man guilty of a crime, unless his mind be also guilty.'

This maxim has formed the foundation of criminal liability in common law jurisdictions and essence of this maxim mandates that in order to hold person liable for any crime, two elements must be present;

1. The person must have committed an **guilty act** (Actus Reus)
2. The person must have committed the act with a **guilty mind** (Mens Rea)

Thus, the element of mens rea mandates that X must not simply have done the act that he is accused of, but also must have done the act with a guilty mind. The concept of a guilty mind is not that of a malicious mind. It is the presence of such a state of mind in a person wherein he can be legitimately be held responsible for the acts committed by him under the provision of law. The

element of mens rea implies a state of mind which is characterised by the presence of knowledge, intention, motive, negligence etc depending on the definitional requirements of the crime in question. Thus mens rea is present when a person knew about the consequences of his act when under the provision of law, such awareness is sufficient to hold the person criminally liable. It is also present when a person acts negligently and fails to take the due care which a person of ordinary prudence ought to do. The fact that a person can be held mentally responsible for the acts committed by him forms the **foundation of his criminal liability.**

It may be noted that the term mens rea has not been explicitly mentioned in any of the provisions of the BNS. However, the concept pervades all the crimes enumerated therein by implication through use of words such as 'voluntarily', 'fraudulently', 'wilfully' 'intentionally', 'wrongfully', 'dishonestly', 'negligently' etc. Thus, the requisite mens rea in a given situation depends on the definition of the offence.

For example, Section 115(1) provides that when X causes hurt to Y by doing something with the intention to cause hurt to Y, he is said to 'voluntarily cause hurt'. The same is punishable under section 115(2). Thus, when X intentionally throws a rock at Y, he is aware about the physical consequences of the rock hitting Y. He would be liable for causing hurt to Y even though he was not meaning to hurt Y was only joking around. In this case, the awareness in X about the physical consequences of his act is sufficient mens rea to attract criminal liability.

When an act is an offence when committed with a dishonest intent, mens rea is present if the person had the dishonest intent. The person would not be liable simply because he did the act intentionally as long as he was not acting dishonestly. For example, section 303 of the **BNS** defines theft as X taking dishonestly the movable property of Y without the consent of Y. In this case, it is not sufficient that X was aware about the physical consequences of taking a

movable property of Y (for example a book) to his own house. It is also necessary that he must have done the act with a dishonest motive. Thus, when X has taken the book of Y innocently to read it and then return it, he is not guilty of theft as the mens rea as required under section 303 is absent. On the other hand, if X has taken the book with a view to gift it away to one of his cousins, he is guilty of theft as the requisite dishonest motive is present.

It is important to understand that for mens rea to be present, it is not necessary that a person **intended** for a specific crime. What is important to prove is he intended to commit the acts that he committed and was aware of the possible physical nature of the consequences, even though he might not have known that his acts constitute a crime.

For example, X, a private citizen captures a notorious thief (Y) and shoots Y in the head without there being any immediate threat or danger from Y. Here, as long as X was aware about the physical consequences of shooting a person in the head, he has committed a crime even though in his mind he was dispensing justice and not committing a murder.

Thus, in terms of intention, mens rea does not mean the intention to commit a crime but the intention to commit an act being aware about the physical consequences of the act. This is best exemplified by the illustration to section 2(33) which defines the term 'voluntarily'. According to section 2(33), X is said to do something voluntarily when X causes an effect by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it. The illustration to section 2(33) provides a scenario where for the purpose of facilitating a robbery, X sets fire to a residential house at night in an inhabited town. Due to the fire, a person (Y) who was sleeping in the house died. Here, the main purpose of X was to facilitate a robbery and he might not have intended to commit the offence of murder by causing the death Y but he will still be liable

for the same as he knew such a consequence to be likely when setting fire to a residential house at night.

The element of mens rea can be also understood by exploring the situations where it is absent. Thus, when a person does something not voluntarily but under some coercion, mens rea is absent in such a situation. This is underscored by the maxim of *actus me invito factus non est mens actus* which is considered an accompanying principle to the fundamental principle of *Actus non facit reum nisi mens sit rea*. Literally, it means; **an act done by me against my will is not my act**. This principle is also recognised in the BNS under Section 32 wherein a person is excused from criminal liability when he commits the crime (other than murder or an offence against the state punishable with death) under threat to his life.

Also, mens rea is said to be absent when the act is committed under the influence of insanity or involuntary intoxication of a nature which deprives the person of the capacity to know the nature of his act. Similarly, an infant is excused from criminal liability due to the lack of maturity in understanding the nature of the acts committed by him. A person is also excused from criminal liability when the act committed is by mistake or due to an accident.

Exception to the Requirement of Mens rea (STRICT LIABILITY)

It is important to remember that though the element of mens rea is traditionally an inherent part of most definitions of crime, there are certain exceptions to the rule. There are certain situations where a person will be held guilty of a crime even though it may not be possible to hold him responsible for the alleged act. These are known as rules of strict liability when the commission of the act is itself a conclusive proof of the fault of the accused and the **state of his mind plays no part in the determination of his guilt**.

Strict liability offences are those offences in which mens rea is not required to be proved. In such kind of offences, the accused may be held guilty

on proof of actus reus even without guilty mind. English court has consistently held that the liability will be strict if legislature has not defined the offence with reference to the guilty mind. If the intention of the law makers is to exclude mens rea then the offender will be guilty without mental element.

The following are the exceptional case in which mens rea is not required in criminal law.

- 1 Mens rea is not essential in respect of **offences including waging war, kidnapping, contempt of court, public nuisance, counterfeiting coins, criminal libel, bigamy**, etc. Thus, in *R. Vs. prince*, 1875 L.R 2 CCR 154, where the accused is charged with kidnapping a minor girl, his plea that he honestly believed that the girl was not minor was not accepted by the court.
- 2 Several modern Statutes passed in the interest of public safety and social welfare imposes such a strict liability. In matters concerning public health, food, drugs, environment, taxation, bribing, smuggling, forex violations, sale of adulterated articles etc., such strict liability is imposed. In state of Maharastra **Vs M.H.George**, AIR 1965 SC 722, the Supreme court held that **offences which adversely affected the economic conditions of the country** will be strict liability offences.
- 3 When it is difficult to prove mens rea, where the penalties are petty fines, and where a statute has done away with the necessity of mens rea on the basis of expediency, strict liability in criminal law may be imposed e.g. **traffic offences**.
- 4 In case where a person violates a law without the knowledge of the law, it cannot be said that he has intentionally violated the law. As **ignorance of the law is no excuse**, the fact that he was not aware of the law and that he did not intend to violate it, is no defence. He would be liable as if he was aware of the law.