

PRINCIPLES OF CRIMINAL LIABILITY

INTRODUCTION

The general basis for imposing liability in criminal law is that the defendant must be proved to have committed a guilty act whilst having had a guilty state of mind. The physical elements are collectively called the *actus reus* and the accompanied mental state is called the *mens rea*.

It is the fundamental duty of the prosecution to prove both of these elements of the offence to the satisfaction of the judge or jury beyond reasonable doubt. In the absence of such proof the defendant will be acquitted.

ACTUS REUS

ACTUS REUS

An *actus reus* consists of more than just an act. It also consists of whatever circumstances and consequences are recognised for liability for the offence in question - in other words all the elements of an offence other than the mental element.

Crimes can be divided into two categories:

- First, there are conduct crimes where the *actus reus* is the prohibited conduct itself. For example, the *actus reus* of the offence of dangerous driving is simply "driving a mechanically propelled vehicle on a road or other public place" (s2 Road Traffic Act 1988). No harm or consequence of that dangerous driving need be established.
- The second type are known as result crimes where the *actus reus* of the offence requires proof that the conduct caused a prohibited result or consequence. For example, the *actus reus* of the offence of criminal damage is that property belonging to another must be destroyed or damaged (s1(1) Criminal Damage Act 1971).

THE ACTUS REUS MUST BE VOLUNTARY

The accused's conduct must be "voluntary" or "freely willed" if he is to incur liability. It may be involuntary for a variety of reasons:

AUTOMATISM

Automatism occurs where the defendant performs a physical act but is unaware of what he is doing, or is not in control of his actions, because of some external factor. See:

R v Quick [1973] 3 All ER 347.

REFLEX ACTIONS

Sometimes people can respond to something with a spontaneous reflex action over which they have no control. Although slightly different, this is sometimes classed as a form of automatism.

The classic example is that given in *Hill v Baxter* [1958] 1 All ER 193, of someone being stung by a swarm of bees while driving, and losing control of the car.

PHYSICAL FORCE

The conduct may be involuntary in that it is physically forced by someone else, in which case there will be no *actus reus*. See:

Leicester v Pearson [1952] 2 All ER 71.

"STATE OF AFFAIRS" CASES

One group of cases which cannot be discussed in terms of voluntary acts are often referred to as the "state of affairs" cases. These crimes are defined not in the sense of the defendant doing a positive act but consisting in the defendant "being found", "being in possession" or "being in charge" etc.

In some such cases all the prosecution needs to prove are the existence of the factual circumstances which constitute the crime - the existence of the state of affairs. See:

R v Larsonneur (1933) 24 Cr App R 74.

Winzar v Chief Constable of Kent (1983) The Times 28 March.

OMISSIONS

Can a person be held criminally responsible for a failure to act? The general rule is that there can be no liability for failing to act, unless at the time of the failure to act the defendant was under a legal duty to take positive action:

"Unless a statute specifically so provides, or ... the common law imposes a duty upon a person to act in a particular way towards another ... a mere omission to act [cannot lead to criminal liability]."
(*R v Miller* [1983] 1 All ER 978.)

A positive duty to act exists in the following circumstances:

(a) DUTY ARISING FROM STATUTE

Liability for failing to act will be imposed where the defendant can be shown to have been under a statutory duty to take positive action.

A leading example of such a case is provided by the Children and Young Persons Act 1933, which creates the offence of wilfully neglecting a child. Hence by simply failing to provide food for the child, or failing to obtain appropriate medical care, a parent could be held criminally liable for any harm that results. See also:

Greener v DPP (1996) The Times, Feb. 15, 1996.

(b) DUTY ARISING FROM A CONTRACT

Where a person is under a positive duty to act because of his obligations under a contract, his failure to perform the contractual duty in question can form the basis of criminal liability. See:

R v Pittwood (1902) 19 TLR 37.

(c) DUTY OWED TO FAMILY MEMBERS

The common law recognises a duty that members of a family owe to each other to care for each other's welfare. See:

R v Gibbons and Proctor (1918) 13 Cr App Rep 134.

The problem with such common law duties is that their exact limits are rather difficult to define, hence it may be difficult to determine when liability is likely to arise.

(d) RELIANCE

The courts have in recent years moved towards recognising the existence of a common law duty of care where there is a relationship of reliance between defendant and victim. Thus if someone voluntarily assumes responsibility for another person then they also assume the positive duty to act for the general welfare of that person and may be liable for omissions which prove fatal. See:

R v Stone and Dobinson [1977] 2 All ER 341.

(e) DUTY DUE TO DEFENDANT'S PRIOR CONDUCT

If the defendant accidentally commits an act that causes harm, and subsequently becomes aware of the danger he has created, there arises a duty to act reasonably to avert that danger. See:

R v Miller [1983] 1 All ER 978.

CAUSATION

Questions of causation can present problems in the consideration of actus reus. When the definition of an actus reus requires the occurrence of certain consequences, the prosecution must prove that it was the defendant's conduct which caused those consequences to occur.

For example, in murder the prosecution must prove that the victim died; in section 18 of the Offences Against the Person Act 1861 that the victim was wounded or caused grievous bodily harm; and in criminal damage that the property was destroyed or damaged.

In such crimes it is necessary for the prosecution to prove that the accused's act caused the consequence or in other words that the accused is liable as a matter of causation for the crime.

Most of the reported cases are concerned with murder and manslaughter where certain problems do arise. For example, see:

R v White [1910] 2 KB 124.