



Criminal Liability

A person who commits a wrong is said to be liable or responsible for it. Liability or responsibility is the bond of necessity that exists between the wrong doer and the remedy of the wrong. A man's liability consists of those things, which he must do or suffer because he has already failed to do what he ought to have done. It is the ultimatum of the law.

The basic rule is commonly expressed in a Latin Maxim: -

'Actus non facit reum nisi mens sit rea'

Conduct doesn't make a man guilty unless his mind is also guilty

Generally speaking therefore a crime will have two features or components, these are:-

1. **Actus Reus** – the physical, material or external component
2. **Mens Rea** – The formal, mental element

There are however, a large number of statutory offences which don't require proof of mens rea. These are the so-called **crimes of strict liability**

Material condition for liability (Actus Reus)

The sum of Material or physical circumstances, of which would amount to the fact prohibited by the law caused by an act of man.

Material Condition may be:-

- An Act
- An omission
- A state of affairs

The material or physical condition of criminal liability consists of an act of man (act is therefore used in the widest sense of what man is capable) - any event which is subject to the control of human will.

As to the nature of the will and the control exercised by it, it is not for lawyers to dispute.

It is a problem for philosophers and physiologists and not of jurisprudence

Some Offences

Rape and Arson (common knowledge with violence): - these are described in our criminal code. Others are not but case law has defined them - e.g. theft

There are various categories of acts: -

- positive or negative acts, **Acts of commission or acts of omission** (A wrongdoer whether he does that which he ought not to have done or leaves undone that which he ought to have done)
- Secondly, acts can either be **internal or external**. The former are acts of the mind, while the latter are acts of the body.

A bare intent to commit a crime is not amenable to criminal justice – “the imagination of the mind to do wrong without an act done is not punishable in our law” (Judge in the case of Hales Vs Petit Plwod)

At first, the crime of conspiracy (section 57 and 58 of the criminal code) is an exception to this principle. But the exception is only apparent. It is true that conspiracy itself is a purely mental state- but it would be impossible for two or more men to come to an agreement without communicating to each other their common intentions by speech or gesture, and thus even In conspiracy there is a physical external act

Every human act is made of 3 factors or constituent parts: -

1. The origin in some mental or bodily activity
2. Its circumstances

3. Its consequences

Example - In a bank robbery A shoots B dead. the material elements of A's acts are the following:-

- Its **origin or primary stage**, namely a series of muscular contractions, by which the rifle is raised and the trigger is pulled
- **The circumstances**, the chief of which are the facts that the rifle is loaded and in working order and B is in the line of fire
- **The Consequence**, the chief of which are the fall of the trigger, the explosion of the powder, the discharge of the bullet, the passage through the air and through the body of the man killed and the death

A similar analysis will apply to all acts for which a man is legally responsible. Whatever the act the law prohibits as being wrongful is prohibited in respect of its origin, its circumstances and its consequences. For unless it has its origin in some mental or physical activity of the defendant, it is not his act at all and apart from its consequence and results it cannot be wrongful.

The harmful consequences of an act prohibited by the law need not always however be real/actual – they can be merely anticipated. This means that an act may be mischievous in the eye of the law in two ways; either in actual results OR in its tendencies

Criminal liability is sufficiently established by the proof of some act, which the law deems dangerous in its tendencies, even though the issue is in fact harmless, the formula of the law is usually:

IF you do this you will be held liable in all events and not

If you do this you will be liable if any harm ensues

Formal condition for liability (Mens Rea)

As a general rule, criminal law doesn't apply to an individual who acted without mental fault. As said already the conditions of criminal liability are sufficiently indicated by the maxim: - "Actus non facit reum nisi mens sit rea"

A man is responsible not for his acts in themselves, but for his acts coupled with the mens rea or guilty mind with which he does the acts.

Before imposing punishment, the law must be satisfied of 2 things: -

1. That the act has been done which with by reason of its harmful tendencies or results, is fit to be repressed by way of penal discipline
2. The mental attitude of the does towards his deed was such as to render punishment effective for the future and therefore just

The first is the material (actus reus), the second is the formal condition of liability (mens rea)

This formal condition or mens rea may assume 2 distinct forms namely,

1. Wrongful Intention (DOLUS)
2. Culpable Negligence (CULPA)

The offender may either have done the wrongful act on purpose or may have done it carelessly. If he intentionally chose to do wrong, penal discipline will furnish him with a sufficient motive to obey the law in the future. If on the other hand he committed the forbidden act without wrongful intent, but yet, for want of sufficient care devoted to the avoidance of it, punishment will be an effective inducement to carefulness in the future. But if his act is neither intentional nor negligent, if he not only didn't intent it but did his best as a reasonable man to avoid it, there could be no good purpose fulfilled in ordinary cases by holding him liable for it.

There are many exceptions in the law which sees fit to break through the rule as to Mens Rea. The law may hold a man responsible for his acts, independently altogether of any wrongful intention or

culpable negligence. Wrongs which are thus independent of Mens Rea are distinguished by Salmond as wrongs of absolute liability. It follows that in respect of the requirement of mens rea, offences may be of 3 kinds:-

1. **Intentional or Willful offences**, in which the mens rea amounts to the intention, purpose or design
2. **Offences of Negligence**, in which the mens rea assumes the less serious form of mere negligence as opposed to wrongful intent
3. **Offences of absolute liability** , in which the mens rea is not required, neither wrongful intent nor culpable negligence being recognized as a necessary condition of responsibility.

