

W201 The Individual and the State

Study notes on actus reus mens rea omissions and causation

Actus reus / Mens rea

In civil courts use of Latin phrases has been abolished by the Woolf reforms but in criminal courts you will still encounter them. Do not be put off - there are not many and you will soon get used to them.

The most used phrases are actus reus and mens rea. Most crimes have two elements:

1. The physical element - lawyers call this actus reus (literally guilty act).
2. The mental element - lawyers call this mens rea (literally guilty mind).

For strict liability offences (e.g. using a motor car with no insurance) often no mens rea is required. The only issue is - is there insurance?

Words such as **dishonestly wilfully maliciously** or **with intent to** signify the mens rea required.

When reading the definition of a criminal offence always analyse it by separating

- the actus reus
- the mens rea
- and any defences referred to in the statute or common law definition.

Omissions

Most crimes are now set out in statutes. A few are still common law offences. The most important common law offences are murder and manslaughter.

When deciding if someone has committed a crime in practice you just look up the law (usually a statute) and check the wording of the offence. It simply doesn't matter whether the conduct prohibited is an act or an omission. If the statute or common law prohibits it that is an end to the matter.

From an academic point of view most crimes involve positive acts and omissions are the exception and therefore worthy of comment. It is interesting to see where different legal systems draw the line in deciding whether to make a moral obligation to act a legal obligation. (Ie walking away from the drowning man.)

Doing nothing involves criminal liability in several situations:

Statutory liability

If the law says doing nothing is a crime and that you must act in a certain way you are liable eg

Failing to provide a breath test - Road Traffic Act 1988

Duties arising from special relationships

The other situations are common law exceptions which have arisen over the years

1 Care and control of children

Child neglect (up to age 16) is now contained in the Children and Young Persons Act 1933 and carries up to 10 years in prison.

Neglect leading to death can be charged as murder or manslaughter (eg by deliberately or by gross negligence starving a child to death) carrying life imprisonment.

Gibbins and Proctor 1918 C A (Father and common law wife starved 7 year old - murder.)

2 Assuming care of another

If a person is over the age of 16 you are not responsible unless you voluntarily assume care. This happens most frequently with close relatives. Failing to feed or fetch medical help can then result in criminal liability for murder or manslaughter.

Instan 1893 CCCR (D lived with Aunt who had gangrene. D failed to feed her or call for medical help - manslaughter.)

Stone and Dobbinson 1977 C A (Stone's sister Fanny came to live with him and his mistress. Fanny fell ill and died in squalor. No medical help was sought - manslaughter.)

Ruffell 2003 C A (friend of D took drugs while a guest at D's house – D tried to revive him but failed to provide proper care – manslaughter).

3 Contractual or public duty

Pittwood 1902 Assizes (A level crossing keeper failed to close gates and a carter was killed by a train - manslaughter.)

Dytham 1979 C A (A policeman saw a man kicked to death by bouncers outside a nightclub, he simply left the scene - wilful misconduct in a public office.) Could he have been convicted of manslaughter if his intervention would have saved the victim?

4 Duty to avert a danger of one's own making

Courts as a matter of common sense have held that if you create a danger you may be under a duty to take reasonable steps to avert it.

Miller 1983 Lords (D sleeping rough, cigarette causes mattress to smoulder. D moves to another room ignoring it. Fire ensues - arson.)

Evans 2009 C A (D bought drugs and gave them to her 16 year old half sister who overdosed. D failed to get medical help in case she (D) got into trouble. The half sister died – gross negligence manslaughter).

Causation

Causation is often an issue in murder or manslaughter but can arise in any result crime (eg damage) where you have to prove the criminal conduct caused a particular result.

Ask the following three questions:

1 Is there a factual link?

The “but for” test answers this.

Would the result have occurred but for D's act?

A good example is **White** 1910 (D put cyanide in his mother's bedtime drink. She died coincidentally in the night of natural causes! No liability for murder - only for attempt.)

2 If there is a factual link is there a legal link?

It must be an "**operating and substantial**" cause. This test was laid down in **Smith** 1959 Courts Martial Appeal Court (Bayonet wound in barrack room brawl - victim dies after 'thoroughly bad' medical treatment – the wound was still a legal cause of death).

It need not be the only cause. See **Malcherek and Steel** 1981 C A confirming the Smith test (Both victims on life support machines. Doctors switch them off as victims are brain dead. Discontinuance of treatment does not break the chain of causation.)

3 Does the act of a third party break the chain of causation?

This is sometimes called novus actus interveniens (literally an intervening new act).

The general principle was explained in **Kennedy (No 2)** 2007 Lords where Lord Bingham first explained the exceptions: “The law recognises certain exceptions, in the case of the young, those who for any reason are not fully responsible for their actions, and the vulnerable, and it acknowledges situations of duress and necessity, as also of deception and mistake”. Then he set out the general principle: “The criminal law generally assumes the existence of free will ... generally

speaking, informed adults of sound mind are treated as autonomous beings able to make their own decisions how they will act”.

The chain of causation is not broken if the act is foreseeable or in the case of a third party intervening the act is 'reasonable in the circumstances'.

Pagett 1983 C A (D used his pregnant girlfriend as a human shield and the police shot her. D was convicted of manslaughter. The police acted reasonably and within their duty.

Special situations

Medical Negligence

Courts don't like to see defendants escape conviction because medical negligence aggravates a victim's condition or kills him.

Courts say that misdiagnosis or wrong treatment is foreseeable and therefore not a novus actus. Cases where this defence works are rare e.g. **Jordan** 1956 CCA (Original stab wound mainly healed - medical treatment "palpably wrong".) The mainstream cases stress it will only apply "in the most extraordinary or unusual case" e.g. **Cheshire** 1991 C A. (Victim died of breathing problems after treatment for gun shot wounds in the leg and stomach. Held - injuries need not be the sole or main cause of death if they contributed "significantly". Significant means "more than negligible".)

Escape Cases

Sometimes victims of attacks don't hang around. They jump from moving cars or out of windows to escape and thereby suffer injury. Courts have little sympathy with defendants who frighten their victims to this extent. The defence of novus actus failed in **Williams** 1992 C A where the court said the test is - was it "so daft as to make it his own voluntary act" breaking the chain of causation. (In Williams a hitch-hiker jumped from a moving car fearing he was about to be robbed and was killed.)

In the case of **Marjoram** 1999 C A (Complainant jumped or fell from window of hostel suffering serious injury as a group including the defendant shouted abuse kicked her door and forced her door open.) it was held (citing **Williams** with approval) that the test was "could a reasonable person have foreseen the victim's conduct as a possible outcome". This test was an objective one.

Eggshell skull cases

In crime you must generally take your victim as you find them e.g. **Blaue** 1975 C A (D stabs a woman - a Jehovah's witness - who refuses a blood transfusion and dies.) The Court of Appeal said "those who use violence on other people must take their victims as they find them".