

Mens Rea / Actus Reus

Teacher Resource

Overview: Mens Rea and Actus Reus are difficult concepts to grasp. This resource can be used as part of a larger unit on the criminal law, or to assist students who are having difficulty with the concept. There are a number of activities and delivery formats to be tailored to the learning style of students.

Legal Focus: Criminal law, legal process

Estimated Time: 1 period

Overall Expectations:

- Describe the criminal trial process.
- Explain how Criminal and Provincial Laws apply to young people.
- Apply the steps in the process of legal interpretation and analysis.

Teaching & Learning Strategies

1. Discuss the concept of *Mens Rea* and *Actus Reus*. Use the *Mens Rea/Actus Reus* Handout either in class or as a pre-reading assignment to introduce the idea to students.
2. Use the *Think/Pair/Share* technique to introduce the idea of having a 'guilty mind'.

Discussion Questions

For an act to be a crime, do you think the accused person must have intended to commit the crime (i.e. is it necessary for the person to have a "guilty mind")?

Consider a situation where a person might have committed a criminal act without meaning to. Should the person be charged? Would it be fair to be convicted of the crime? Share your conclusions with the class.

Have students think about their reaction for 30 seconds. Ask them to discuss their thoughts and opinions with a partner. Discuss as a class.

3. In small groups, or individually, assign the Worksheet. Give students time to discuss each scenario. Using the Teacher's Key, review the worksheet and invite students to explain their interpretation of each activity.

- Use the three comic book panels to illustrate the concepts of *mens rea*, *actus reus* and wilful blindness. Have students discuss the state of mind and actions involved in each. Ask students, in small groups, to decide which concept is depicted in each. Ensure that students who interpret the actions, facial expressions or states of mind differently have an opportunity to present their interpretation.
- Using the blank comic panel, invite students to draw a different criminal scenario, in which the different states of mind are evident. Display and discuss these.

Resources

Ontario Justice Education Network

- Criminal Law Mock Trial Scenarios (available at www.ojen.ca)
- Criminal Law Mock Trial Role Preparation Package
- Criminal Law Mock Trial Justice Sector Volunteer Package
- Making the Case: Mock Hearing Toolkit*

Mens Rea / Actus Reus Worksheet – Teacher’s Key



- Describe a common situation where someone commits an illegal act but does not intend to:
 - where someone accidentally or unintentionally harms another person. This could include unintentional physical acts (i.e. hitting someone while sleepwalking) or an intentional physical act that unintentionally harms another person (i.e. the bee example above).
 - where a person possesses something illegal but either does not know the nature of the substance (i.e. he believes the cocaine is baking soda) or does not realize he has it.
 - in cases where someone is acting on a mistaken set of facts. For example, a vendor might sell alcohol to a minor who appears to be over 19 without realizing that the minor is actually under-age. However, it doesn't matter if the person is ignorant of the law or is wilfully blind by not checking ID.
- In each of these scenarios, mark in the chart if you think that the person had the *actus reus* (guilty act) and the *mens rea* (guilty mind) necessary to be found guilty of the crime. Remember that someone may still have the *mens rea* if they are wilfully blind.

| Act | Mens Rea | Actus Reus |
|---|------------|------------|
| a) While browsing in a CD store, Rasheed ran into a friend from his old school. They decided to get a coffee. As they left the store, Rasheed forgot that he had a CD he was considering buying under his arm. | | ✓ |
| b) In line for a concert, a friend asked Chanice to hold her bag while she went to the bathroom. A drug dog stopped in front of Chanice. The police searched the friend's bag and found a marijuana joint. Chanice was charged with possession of a narcotic. | Maybe ✓ | ✓ |
| c) Sophie baby-sits the neighbour's kids everyday after school, sometimes driving them to soccer in the family car. After dropping them off one day, she decides to watch their | ✓ | ✓ |

| | | |
|--|---|---|
| practice. Sophie leaves the dog in the car for a few hours even though it's 35 degrees outside. Before the end of the game, someone walks by, notices the distressed dog, and calls the police. | | |
| d) Mao was charged with assault after he lost his temper in a restaurant. He felt the bill was unfair. He slammed his fist down on the table and a glass flew off, hitting a customer at the next table and cutting his cheek just below the eye. | | ✓ |
| e) Brandon was on his way into the beer store when a woman asked him if he would mind buying her a six-pack of beer while she stayed outside with her dog. He said sure and accepted her money. Once in line he thought that she looked a little young, but bought her the beer anyway. | ✓ | ✓ |
| f) It's Hockey Night in Canada and the Leafs are playing the Senators. Darcy Tucker of the Leafs is looking to get back at Chris Neil of the Senators for a dirty body check in their last game. After a brief verbal exchange, the two players drop their gloves and start punching each other. When the referee notices Neil's nose bleeding, he stops the fight. Neil is not seriously hurt but he sits out the rest of the period. | ✓ | |
| g) Carmen comes to work one Tuesday feeling really sick. She's recovering from a particularly bad flu and, after a few hours at work, she decides she needs to go home because she's really tired. Carmen gets into her car and starts driving but she's having a hard time focussing on the road because she's so tired. A police officer driving behind her notices she is weaving across driving lanes. Just before he stops her Carmen falls asleep at the wheel and drives into a ditch. Luckily, no one is seriously hurt. | ✓ | ✓ |

The above scenarios are designed to help students decide whether the *actus reus* and *mens rea* are established and only include a fraction of what would be relevant information in court. In many of the listed scenarios, students' findings on whether *actus reus* and *mens rea* exist are subjective or may depend on assuming facts not in the brief scenarios. A judge in court hears much more information relating to the offence and possible defences in deciding whether or not the accused person is guilty of a criminal offence.

- a. The *actus reus* for theft is established because Rasheed left the store with the unpaid CD. However, there is no *mens rea* because Rasheed did not intend to steal the CD.
- b. Again the *actus reus* of possession of a narcotic is established but the *mens rea* may not be. If Chanice knew the backpack contained drugs, she would have the required "state of mind". However, if she did not know there were drugs in the backpack, there is no *mens rea*.
- c. This is an "omission" instead of a "commission" offence. To establish *actus reus*, Sophie must be found to have either abandoned the dog in distress, wilfully neglected it thereby causing pain or suffering, or failed to provide it suitable care [see s. 446(b) or (c)]. Leaving a dog locked in a car for several hours in hot weather is enough evidence to establish *actus reus* for these offences. Intending to leave the dog in the car is enough to satisfy the *mens rea* requirement for the offence.
- d. In order to be guilty of assault, Mao would have had to intentionally apply force to the customer. Because he did not intentionally do so, he does not possess the required *mens rea*.
- e. Under ss. 30(1) and 30(2) of the *Ontario Liquor Licence Act*, it is an offence to knowingly sell or supply liquor to a person under 19 years of age or to sell or supply liquor to a person who appears to be under 19 years of age. In this example, the *actus reus* of selling liquor to a minor is established. Regarding *mens rea*, Brandon either knew the woman appeared to be under 19 or was wilfully blind to that effect.

- f. In this case, Darcy Tucker would have the required *mens rea* because he intended to punch Chris Neil. Despite the existence of *mens rea*, there are circumstances where there is no *actus reus* in a consensual fight. Where a consensual physical fight results in no harm or minor harm or where the consensual fight is part of socially valued activity such as sports, the act is not illegal. However, there is no consent where a fight that is at first consensual ends in serious harm. In a sports context, if the fighting goes beyond what is normally accepted behaviour, the act can become an illegal one. Should people be able to consent to fighting that results in serious harm? What are potential problems with this approach?
 - g. A person is guilty of dangerous operation of a motor vehicle under s. 249 where she or he operates a motor vehicle in a way that is dangerous to the public having regard to all the circumstances including road conditions and traffic. In this case, Carmen's driving satisfies the *actus reus* requirement because she is weaving across lanes, falls asleep and drives into a ditch. There is also evidence to establish *mens rea* because, even if she did not intend to drive dangerously, a reasonable person in Carmen's shoes would have known that driving while that tired posed a risk to the lives and safety of others. Negligence satisfies the mental element for the offence of dangerous driving and does not require proof of intention. What are some arguments for why it shouldn't matter whether or not Carmen intended to drive dangerously? What about if Carmen had been drinking before she got in the car?
3. What is the *mens rea*, or required state of mind, for the offence of manslaughter? (s. 234 and *R. v. Crieghton*, [1993] 3 S.C.R. 3)

The minimum *mens rea* for manslaughter is whether, on an objective analysis, the act carried a risk of causing harm to the person. That is, if a reasonable person would think that the act would probably cause bodily harm, *mens rea* is established. The Crown must show that the accused intended the act **and** that a reasonable person would have known that the act could cause harm or that harm would be a likely consequence. There is no requirement that death be a likely consequence.

Think about the two following examples:

1. Zaid and Erik are walking on the sidewalk along a busy street, laughing and joking around. Erik is teasing Zaid about something so Zaid gives him a little, joking push. This makes Erik lose his balance and fall into the traffic where he is hit by a car. He is taken to the hospital but he doesn't make it. In this case, it is unlikely that Zaid would have the *mens rea* for manslaughter because most people would not normally think a small push would likely cause any harm.
2. Jolanda and Iman are arguing in the hall near the stairs. Jolanda has just found out that Iman has been cheating with Jolanda's boyfriend for the past few months. Jolanda's really angry so she punches Iman in the face as hard as she can. Iman falls backward down the stairs. When the paramedics come she is lying motionless on the bottom of the stairs. They cannot revive her. Jolanda feels really bad and tells the police she didn't mean to hurt Iman badly or make her fall down the stairs. In this case, Jolanda would probably have the necessary *mens rea* for manslaughter because she intentionally assaulted Iman and the average person would think that a hard punch could cause harm.

If the students think it is unfair that Jolanda could be found guilty of manslaughter just for punching Iman, remind them that there is no minimum punishment for manslaughter (see s. 236).

Mens Rea / Actus Reus Handout



Actus non facit reum nisi mens sit rea

The act will not make a person guilty unless the mind is also guilty.

Generally speaking, for a person to be found guilty of a criminal offence he or she must have committed an illegal act (*actus reus*) and had the required "state of mind" (*mens rea*) for the criminal offence. The Crown must prove both elements of the offence, the *actus reus* and the *mens rea*, beyond a reasonable doubt.

Actus reus is Latin for "guilty act." It is common sense that a person must be found to have done the illegal act before she or he can be convicted of the crime. The guilty act can be something a person does or something a person omits to do, i.e. something a person is required to do but fails to do.

Commission of an act: Luis and Jimmy are playing outside with a pellet gun Jimmy got for his 14th birthday. Jimmy is bored and decides to test the gun out on neighbourhood animals. When a stray cat runs by, Jimmy shoots and injures it.

Omission of an act: Malcolm has always wanted a dog so one day he goes to the Humane Society and gets one. At first Malcolm takes good care of the dog but when things get busy at work, he starts to neglect it. Eventually the dog becomes sick and malnourished because Malcolm has stopped feeding it regularly.

Mens rea is Latin for "guilty mind." In Canada, most criminal offences require that a person be found to have had the necessary "state of mind" or *mens rea* for the offence before they can be found guilty. For many offences the *mens rea* refers to **intending to commit the act** but some offences require different "states of mind" (i.e. intending to cause death, knowledge of likely consequences, wilful blindness, negligence, and recklessness). Keep in mind that it is irrelevant whether or not the person knew the act was illegal. Ignorance of the law is not an excuse.

As mentioned above, there are several different types of *mens rea*. In other words, there are different types of mental states for different criminal offences. They include (1) intention; (2) wilful blindness; and, (3) criminal negligence, among others.

Intention – a person intends to commit the *actus reus*

- E.g. Alice walks up to Michael and punches him in the face. Michael's nose is broken by Alice's punch. The act was deliberate.

Wilful blindness – a person knows of the possibility of illegality but chooses not to ask questions or investigate the situation

- E.g. Amanda and Keisha are walking down the street when they come across some DVD stalls. Keisha notices the DVDs are a lot of cheaper than in the store. She wonders if they might be illegal copies. She decides that she'd rather not know either way. She buys two DVDs for \$8.

Criminal negligence – while this person did not realize the consequences of her or his actions, a reasonable person should have

- E.g. Samantha runs a daycare centre. She lets the children run all over the centre. Several times children have fallen down the stairs. It never occurs to Samantha to buy a proper gate to keep the children away from the stairs. One day, little Lee falls down the stairs and is very seriously injured.

If a person does not intend to commit the illegal act, then they may not be guilty of a crime. For example, although it is an assault to hit someone, if the hit is not intended, it is not an assault.

- E.g. Trisha is in the schoolyard and is swarmed by bees. Trying to prevent getting stung by the bees, Trisha swats them in a state of panic. While she is flailing at the bees, her arm hits Dwayne violently in the face. Trisha's action breaks Dwayne's nose.

As is often the case, there are exceptions. Some criminal offences do not require the Crown to prove the "state of mind" of the accused. These offences are called strict liability and absolute liability offences. A person is guilty of a strict or absolute liability offence even if they did not intend to break the law. These offences are often aimed at deterring risky behaviour and at stopping harm before it happens. Examples include traffic offences like speeding and environmental offences like polluting. In these cases, the Crown does not have to prove that the accused person intended to commit the act.

- E.g. Local residents of a small Ontario town have been complaining about a strange smell coming from a nearby stream. When environmental officials come to investigate, they notice a spill between the stream and a large aluminium factory. They trace the spill to a defective pipe belonging to the factory that is used to transport waste from the factory to the sewage plant. Even though factory officials claim they did not know about the spill, the company is charged with an offence under the *Ontario Environmental Protection Act*.



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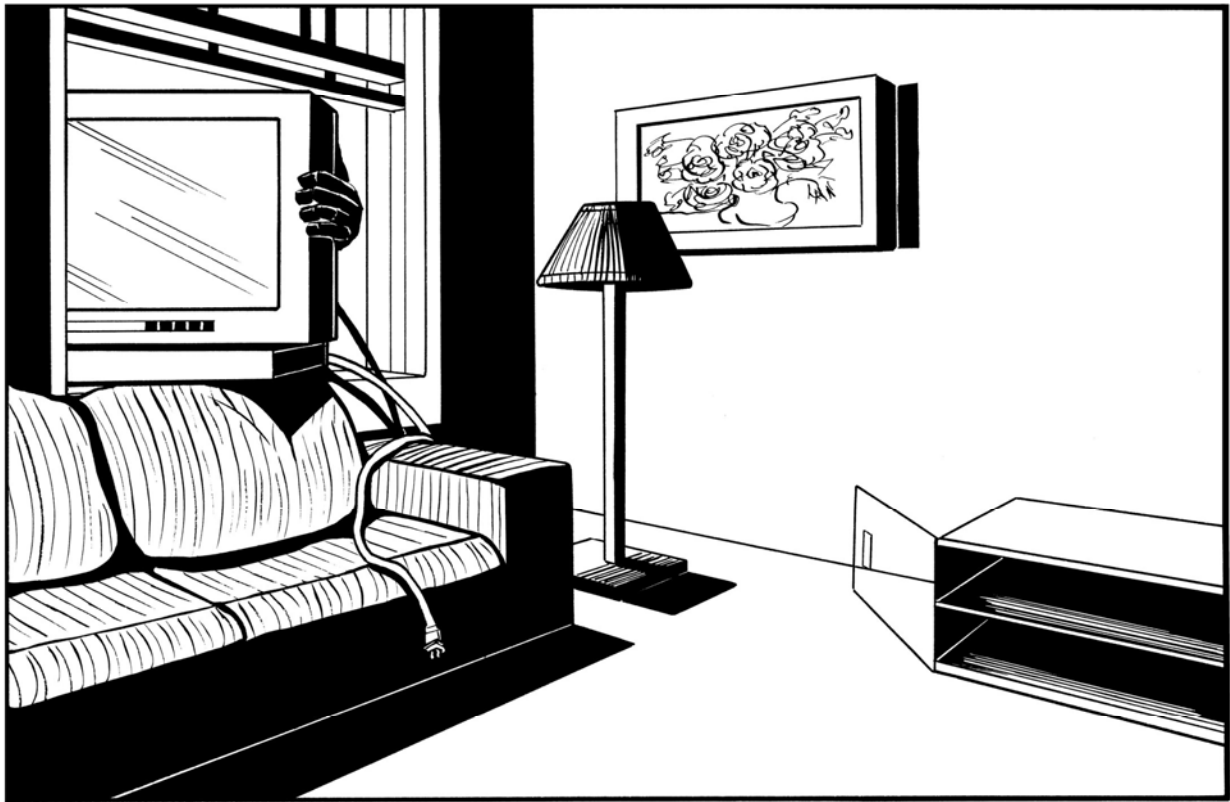
| Act | Mens Rea | Actus Reus |
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Create your own...

Actus Reus + Intent



Actus Reus + Wilful Blindness

Actus Reus + NO Mens Rea