

LLM IIInd Sem  
Jurisprudence-II(L-2002)  
Liability (Mens Rea)

**Introduction**

Mens rea means to have "a guilty mind." Mens Rea or the mental element of crime is a very important part of criminal law in India as well as other countries. Most laws in India contain the element of guilty mind so as to make an act by a person criminally liable for punishment.

**Origin & Development of Mens Rea**

In 12<sup>th</sup> century Mens Rea was not an element of crime. The wrongdoers used to get punished regardless the fact that whether the act done was intentional or not. The concept of Mens Rea was first introduced in the 17<sup>th</sup> century along with the Latin maxim 'actus reus non facit reum, nisi mens sit rea' which means 'there can be no crime without a guilty mind'. This maxim cleared the conflict that a crime can only be said to be constituted where the action was done in accordance of a guilty intention.

**Definition**

- Mens rea is a Latin term meaning guilty mind.
- Mens rea Means an intention to do forbidden act.
- It is defined as the mental element to constitute criminal ability.
- Mens Rea is constructed from a person's thought process, their motive and intention.

## Case

- R v/s Prince (1875).
- Queen v/s Tolson(1889).
- Sherras v/s Rutzen(1895)
- Hobbs v/s Winchester corporation (1910)

## Essentials of Mens Rea

- Mens Rea is constructed from a person's thought process, their motive and intention.
- Motive and intention are two separate ideas. Motive is the reason behind the act whereas intention is a person's state of mind and willingness to break the law.
- **Intention:** It is the state of mind of the person doing the crime. It can be proved when the defendant can foresee virtually that the consequences of the action of the person is going to kill, cause grievous injury or any other prohibited harm to them.
- **Motive:** A motive in criminal law is the cause that moves people to induce into a certain action. Motive is not a basic element of crime but it is mostly looked into while investigation of a criminal case. Motive is the reason of any act, hence, even if motive was good but the act was wrong then criminal liability may arise.
- **Knowledge:** the word knowledge or knowingly is used in certain places in IPC to denote Mens Rea. It can be seen from two sides, firstly a person

had knowledge and act in a wrongful manner and secondly, they had knowledge about the bad consequences and chose not to act hence resulting in a wrongful act. Both can be understood as a part of Mens Rea and are punishable.

- **Negligence:** It cannot be used as a synonym for Mens Rea but while looking for guilty intent in any criminal case this aspect is also covered. Negligence is the lack of attention or due care that a reasonable or prudent person may have while performing any task. For a negligent act to turn into criminal negligence its degree shall be high enough to cause criminal liability.
- **Voluntarily:** This word is used in the code to show that the person doing an act had the knowledge of what they are doing and had full control of their actions. Voluntarily can be used to show intention as well. It is used only because it has more extended meaning than ‘intentionally.’

### **Exceptions of Mens Rea**

1. Cases which are not criminal but are prohibited in the public interest under penalty.
2. Public nuisance
3. Cases which are in the form of criminal cases but actually are for enforcing a civil right.

### **Applicability of Mens Rea to Indian Penal Laws**

Mens Rea in the Indian criminal law is of very limited application. Its reasons are obvious. One of the many main reasons is that here in India the entire criminal law is codified, whereunder all the offences are defined carefully. If mens rea is treated as a preliminary condition, it is than included in the very definition of the offence and is treated a part of it. Many definitions in the penal code require that the offence, must have been done 'voluntarily', 'dishonestly', 'knowingly', 'fraudulently', etc. The guilty mind thus be a fraudulent mind ,a dishonest mind or negligent mind. Further there are certain offences under the Indian penal code which are defined without any reference to mens rea or intention for example , offences against the state ,counterfeiting coins etc. General Exceptions (Section 76 to 106) of the penal code prescribes all those condition in which mens rea appears to have been relegated, and therefore no liability in India thus mens rea as a condition of penal liability operates to such an extent it is codified there.

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